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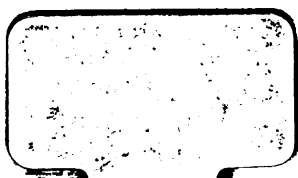
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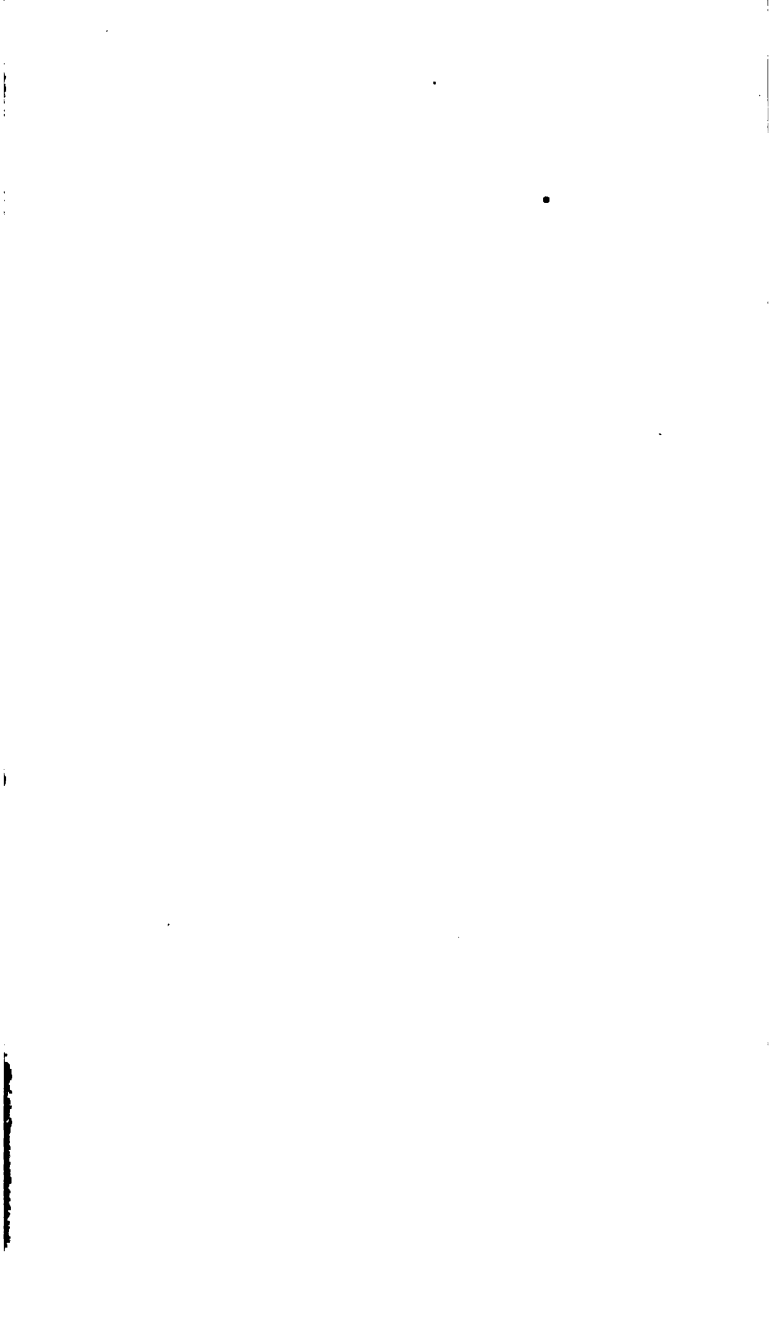
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THE
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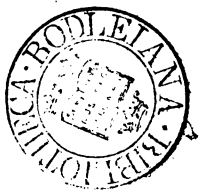
WITH

STATUTES AND PRACTICAL FORMS.

BY

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PREFACE.

THE following Treatise purposes to bring within a condensed view, the law and practice as to costs in the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas at Westminster; the Petty Bag Office in Chancery, the Common Pleas at Lancaster, the Durham Court of Pleas; and upon proceedings in error in the Exchequer Chamber, and in the House of Lords. The few existing treatises connected with this subject have become obsolete; and the material changes in the law by statutes, rules of Court, and regulations of the Masters, have rendered a Treatise wholly applied to the important topic of Costs, imperatively necessary.

The remarks in detail are intended to apply to process at the suit of the Crown against its debtors and accountants; the mixed actions of dower and *quare impedit*; personal actions, (including the action of ejectment); and (from their having a direct reference to civil rights although in form Crown process,) prohibition, *mandamus*, and informations in the nature of *quo warranto*. The inquiry is pursued according to the course of proceeding in an action; and with this end in view, the text has been ranged into Chapters, and a short description of the particular proceedings to which each refers is prefixed. The numbers placed before the Contents of the several Chapters, refer only to the paragraphs:—The remarks as to the law and practice range over seven Chapters; and the eighth contains in full the acts of par-

liament upon the immediate subject of costs, and all the precedents which, from their being of a practical nature, are in constant use amongst legal practitioners. The law cases referred to in support of the positions in the text, are principally of a recent date, and are in that sense more valuable and important; but whenever any ancient authorities of a leading character exist, they also are referred to. The quotations from the Legal Observer are only made use of in instances where there is not in the more general law reports any case in point; and the other cases referred to as in manuscript, are decisions within the personal knowledge of the Author. The annotations upon the Statutes and Practical Forms are not numerous, and have been introduced solely for necessary explanation, in cases where ambiguities in the wording of the clauses occur.

*Temple,
Trinity Term.*

TO THE READER.

The accompanying bill having passed the House of Lords, and been transmitted to the Commons; it is material that the reader should watch its progress, because, in case of its becoming an act of parliament, the law as to the costs in actions of trespass and on the case, will, where the damages are under 40s., be materially altered. In perusing pages 27, 28, 29, 45, [costs of the plaintiff,] 80, 81, [costs of the defendant,] 129, 130, 131, [the Court of Common Pleas at Lancaster,] 131, 132, [the Court of Pleas at Durham,] 146, [43 Eliz. c. 6,] 152, [22 & 23 Car. 2, c. 9,] reference ought, if this enactment is passed, to be made to its provisions.

A bill (as amended on report) intituled :

An act to alter an act of the 43d year of the reign of Queen Elizabeth,^a intituled, An act to avoid trifling and frivolous suits in law in her Majesty's Courts at Westminster, and to repeal so much of an act of the twenty-second and twenty-third year of the reign of King Charles the Second,^b intituled, an act for laying impositions on proceedings at law, as relates to costs in personal actions; and to make further provisions in lieu thereof. [Presented by Lord Denman.]

1. Whereas an act passed in the forty-third year of the reign of Queen Elizabeth, intituled An act to avoid trifling and frivolous suits in law in her Majesty's Courts in Westminster, and another act in the twenty-second and twenty-third years of the reign of King Charles the Second, intituled, An act for laying impositions on proceedings at law, which recites that many good subjects of this realm have been and daily are undone by such suits, contrary to the intention of the said statute of Queen Elizabeth, but the same evil, notwithstanding doth still prevail and increase; and it is expedient to

^a c. 6, s. 2.

^b c. 9.

make further provisions for the prevention thereof. Now be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, that the said recited act of the forty third of Elizabeth, so far as it may be deemed to exempt the action of assault, when a battery is proved on the trial, from the operation of a judge's certificate, and so much of the twenty-second and twenty-third of Charles the Second, so far as the same relate to costs in personal actions, be, and they are hereby repealed.

2. And be it enacted, that if the plaintiff in any action of trespass or of trespass on the case, brought or to be brought in any of her Majesty's Courts at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Common Pleas at Durham, shall recover by the verdict of a jury less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained shall immediately afterwards certify on the back of the record, or on the writ of trial or writ of inquiry, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious.

TABLE OF CONTENTS.

CHAP. I.

Proceedings by the Crown.—Dower; Quare Impedit	1
--	---

CHAP. II.

Personal Actions.—Costs of the Plaintiff	6
--	---

CHAP. III.

Costs of the Defendant	57
----------------------------------	----

CHAP. IV.

Incidental Proceedings	90
----------------------------------	----

CHAP. V.

Execution	115
---------------------	-----

CHAP. VI.

Petty Bag; Common Pleas at Lancaster: Court of Pleas at Durham	127
--	-----

CHAP. VII.

Proceedings in Error.—Exchequer Chamber; House of Lords	133
---	-----

CHAP. VIII.

Statutes; Practical Forms	138
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THE LAW AND PRACTICE OF COSTS.

CHAPTER I.

(1.) Proceedings by the Crown; (2.) Dower; (3.) Quare Impedit.

THE course of practice in the Superior Courts of Law is of equal duration, and coeval with the common law: and in awarding damages, costs are included as parcel thereof.

(1.) As a general rule, the Queen neither pays or receives costs^a in any legal proceeding: and this rule extends to a *scire facias* brought by her, at her immediate suit;^b or when prosecuted at the instance of a subject;^c and also to a petition of right,^d even though the application by the petitioner is dismissed for want of jurisdiction. But the Queen is entitled to costs, in a suit of debt upon a bond, with a penalty;^e and in a proceeding against a collector of taxes,^f if his goods and chattels are inadequate, recourse may be had to his lands, and in that case, the "costs and expenses" may be levied thereout.^g In revenue suits, for any breach of

^a *Williams v. Attorney General*; Hullock on Costs, 338
Rex v. Corum, 1 Anstr. 50; *Rex v. Boyle*, 1 Price, 434.

^b *The King v. Miles*, 7 T. R. 367; *Rex v. Wibling*, 2 C. & P. 10; *Rex v. Scott*, 4 Price, 181.

^c *Brewster v. Weld*, 6 Mod. 229; *Rex v. Bingham*, 1 Tyr. 262; 1 C. & J. 379; S. C. *nom. Hollis v. Bingham*, 1 Dowl. 280; *Ricketts v. Lewis*, 1 B. & Ad. 197.

^d *Exp. Pering*, 5 Dowl. 750; 2 M. & W. 873.

^e 33 Hen. 8, c. 39, s. 54.

^f 43 Geo. 3, c. 99.

^g 25 Geo. 3, c. 35. *Rex v. Boyle*, 1 Price, 434; *Rex v. Hopper*, 3 Price, 40.

the laws, relating to the excise,^h or the customs,ⁱ the defendant may be admitted to make his defence *in forma pauperis*.

Proceedings in matters of revenue, are "at law;" but take place on the revenue side of the Court of Exchequer. In applications under 42 Geo. 3, c. 99,^j for an executor or administrator to account for the personalty;^k for legacy duties;^l or for duties on the residue,^m the practice is for the rule to shew cause to contain a term, that if upon the delivery of the account, any duties shall be found payable to her Majesty, that the executor or administrator shall pay costs to the Crown, and to be taxed in the usual manner.ⁿ The owner or occupier of lands, tenements, or hereditaments, may apply to this Court for relief, where he can shew by affidavit or otherwise, that by reason of some doubt or dispute as to the proper division, parish or place, he has been assessed, rated, or charged to the land tax,^o for two or more of such: he must further shew that it is not made with a view to delay the payment, and express his readiness to bring into Court, pay, or dispose of, as directed, the sum assessed or charged: in such a case, the Court of Exchequer can by a rule or order call on the several Commissioners to appear and maintain, or to relinquish such assessments; and stay all proceedings in the meantime. It can also order payment into Court of the sum assessed, or of any part of it, to abide the determination of the dispute; or to be disposed of as the Court directs; or it may order a feigned issue upon any points or point; direct who is to be the plaintiff, and who the defendant; or dispose of and determine the question in a summary manner: make rules and orders as to costs and all other matters: p make the commissioners refund the whole sum assessed: or part of it:^q

^h *Attorney General v. Dummie*, 2 C. & M. 393; 4 Tyr. 284.

ⁱ 3 & 4 W. 4, c. 53, s. 97. j s. 2.

^k *Ex parte Siratt*, 3 Dowl. 209.

^l *Attorney General v. Hancock*, 2 M. & W. 563; *Arnold v. Arnold*, 2 Myl & Cr. 256; *Sanders v. Kiddell*, 7 Sim. 536; *Douglas v. Congreve*, 1 Keen, 400.

^m *Re Piggott*, 1 C. & M. 827; 3 Tyr. 859.

ⁿ *In re Robertson*, 2 M. & W. 407; 5 Dowl. 609.

^o 1 & 2 Vict. c. 58.

^p *Ibid.* s. 3.

^q *Ibid.* s. 4.

and pay to the applicant his costs of making the application : or incidental, or relating to the same ; or make the applicant pay to the commissioners their costs of appearing and answering such application : or one of the two sets of commissioners to pay to the other set their costs on such application, or proceedings under its order or direction. The costs, charges, and expenses of the commissioners, which are not reimbursed to them, are to be defrayed by a special assessment.^r

Where a motion against the Crown is refused, it may, if so ordered by the Court, receive costs.^s And where a larger sum is levied under a writ of extent than is really due, the Court will order it to be refunded, and with costs to be paid by the prosecutor :^t and in *quære impedit* by the Crown, the Court or a Judge may allow an amendment in the pleadings, even without costs.^u

All judgments, statutes, recognizances and inquisitions for debts due to the Queen under the act of 33 Hen. 8, c. 39, and also all acceptances of office under 13 Eliz. c. 4, must, in order to affect lands, tenements, or hereditaments, as to purchasers or mortgagees, be registered,^v *e. g.* a memorandum or minute containing the name, and usual or last place of abode, and the title, trade, or profession of the Crown debtor ; and also, in the case of a judgment, the Court, and title of the cause ; the date and amount of the debt, damages, and costs recovered ; if on a statute or recognizance, the sum acknowledged, and its date ; and in the case of an inquisition, the sum found due and its date ; and if an obligation or specialty, the sum for which made, and its date ; and in case of acceptance of office, the name of it and the time of accepting it, must be left with the senior Master of the Court of Common Pleas. This officer is bound to enter the particulars in a book, to be called "The Index to Debtors and Accountants to the Crown," in alphabetical order by the name of the Crown debtor or accountant. His fee on this entry is 2s. 6d., and upon a search therein of 1s.

^r 1 & 2 Vict. c. 58, s. 3.

^s *Rex v. Hassel*, M'Cl. 105.

^t *Rex v. Edwards*, 1 Price, 447.

^u *Rex v. York (Archbishop)*, 3 Nev. & M. 453 ; 1 Ad. & Ell. 394.

^v 2 Vict. c. 11, s. 6.

(2.) The only mixed actions^w now remaining are a writ of right of dower, or *unde nihil habet*, and the writ of *quare impedit*. They are maintainable only in the Court of Common Pleas, and upon an original writ sued out in the Court of Chancery, and returnable in the former Court. In these actions, a judgment upon a demurrer,^x whether to pleadings in abatement or in bar, is with costs; and the Court will not allow amendments;^y or a demurrer,^z or a demand of view,^a to be withdrawn, except on payment of costs. The new rules as to pleading^b do not apply here^c: and unless issued^d has been joined upon the mise:^e the tenant, although succeeding on a demurrer, cannot have final judgment.

In Dower, damages are awarded under the provisions of the Statute of Merton;^f and costs follow by virtue of the Statute of Gloucester;^g including all the costs expended in the suit; and even those upon the first writ, where the demandant purchases a writ of journey's accompts. The count is not in form for damages; for though recoverable "pending the writ," yet they are uncertain;^h but upon a *nolle prosequi*,ⁱ the tenant is not entitled to any costs.

In an action at common law, there can only be one judgment given as to the costs.^j

^w 3 & 4 W. 4, c. 27, s. 36.

^x *Ibid.* c. 42, s. 34.

^y *Rex v. Archbishop of York*, 1 Ad. & Ell. 394; 3 Nev. & M. 453; *Reppington v. Tamworth School*, 2 Wils. 118.

^z *Twynning v. Lowndes*, 2 Scott, 250; 2 Bing. (N. C.) 133; 1 Hodg. 196.

^a *Tolson v. Fisher*, 3 Bing. N. C. 783; *Tolson dem., Watson ten.*, 4 Scott, 577; 3 Bing. N. C. 770.

^b Hil. 4, Win. 4.

^c *Miller v. Miller*, 3 Dowl. 408; 1 Scott, 387; 1 Hodg. 31; *Barnes v. Jackson*, 3 Dowl. 404; 1 Scott, 525; 1 Hodg. 37.

^d Bro. Abr. tit. *Droit de Recto*, pl. 16, y. B.; 26 Hen. 8, f. 8, pl. 6; 5 Rep. 85 b; *Richton v. Nesbitt*, 6 Ad. & El. 103.

^e *William, the heir of William v. Gayn*, 2 Saund. 42 o, 45 c.

^f 20 Hen. 3, c. 1.

^g 6 Edw. 1, c. 1; 2 Inst. 288.

^h *Pilfold's case*, 10 Rep. 117; Jenk. Cent. 6; Br. Damages 14; Fitz. Damages, 34.

ⁱ *William v. Harris*, 2 Dowl. 819; 4 Moore & Scott, 358; 1 Bing. N. C. 13.

^j *Middleton v. Crofts*, Andr. 60.

[3.] In *Quare Impedit*,^k the demandant obtaining a verdict, is entitled to full costs; and so also the defendant, if he obtains a verdict, or if there is a discontinuance, or a nonsuit. The archbishop, bishop, or other ecclesiastical patron or incumbent, is not to have judgment given against him for any costs; provided upon the trial, the Judge trying the cause, or on a judgment given on other proceedings in the cause, the Court "certify that he had probable cause for such defence;" but a defence grounded upon a presentation or collation, previously made to the benefice, is not to be considered so.

The issue in dower as to "*unques accouple*," or in *quare impedit*, as to the clerk being living and being *idonea persona*, becomes parcel of the proceeding in the Common Pleas, and the costs of it are costs in the cause. Upon the writ^l for the trial of such issue, going to the bishop,^m or in case of a vacancy of the see, to the guardian of the temporalities, the plea remains *sine die* in the Court of Law until the return of the inquisition; the inquiry takes place in presence of the parties; and on the return of the inquisition, all parties are summoned to hear judgment.ⁿ

In these actions, the Court will not allow a discontinuance by the demandant, except on payment of costs;^o and costs are also allowed upon interlocutory motions.^p

^k 4 & 5 Wm. 4, c. 39; *Holt v. Holland*, Skin. 25; *Windowe v. Bishop of Carlisle*, 3 Bing. 404.

^l *Bishop of Exeter v. Hale*, Ca. Parl. 88.

^m 39, 40 E. 3, 25; *Specot's case*, 5 Rep. 1, 57.

ⁿ Bracton, 419.

^o *Stot v. Perry*, 2 W. Bla. 758; 3 Wils. 206.

^p *Denman v. Bull*, 2 Bing. 387; 9 J. B. Moore, 745.

CHAP. II.

Personal Actions.—Costs of the Plaintiff.

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| <ol style="list-style-type: none"> 1. General Principles. 2. Uniform Practice. 3. Preliminary Proceedings. 4. Commencement of Action. 5. Staying Proceedings. 6. Proceedings on Arrest. 7. Particulars of Demand. 8. Effect of Petition under Insolvent Debtors' Act. 9. Oyer—Copy. 10. Pleadings. 11. Payment into Court. 12. Assets <i>quando acciderint</i>. 13. Notices of Objections. 14. Warrant of Attorney: <i>Cognovis Actionem</i>. 15. Enrolling Deed. 16. Demurrer: Special Case: Error in Fact. 17. Trial by Record: of Peerage. 18. Issue in Fact. 19. Costs of the Day. 20. Admissions. 21. Witnesses. 22. Record of Nisi Prius: Writ of Trial. 23. Changing Venue. 24. Remanet. 25. Putting off Trial: Staying Proceedings. 26. Counsel. 27. Proceedings at Trial. 28. Amount of Debt: Damages. 29. Special Jury. 30. Certificate of Judge: Debt, &c. under 40s. 31. Action on Judgment: Malicious Injuries to Property: As to Customs: Slander: Not setting out Tithes. 32. Certificate of Judge: Debt, &c. not exceeding 20<i>l.</i>: Infringing Patent. | <ol style="list-style-type: none"> 33. Certificate in other Cases. 34. By Executors—Administrators. 35. Several Defendants—Certificate of Judge. 36. Finding of Jury. 37. Verdict: Several Defendants. 38. Ejectments, Nonsuit, not confessing Lease, Entry & Ouster. 39. Feigned Issue: Interpleader Act. 40. Defendant (Infant), Ejectment. 41. Liability of Bail. 42. Against Executors: Administrators. 43. Double: Treble Costs. 44. Certificate for immediate Execution. 45. Writ of Inquiry. 46. Motion for New Trial, &c. 47. Terms of granting. 48. Judges divided. <i>Venire de novo</i>: Arrest of Judgment: Repleader: Judgment <i>non obstante veredicto</i>. 49. Judgment according to the "<i>very right and merits of the Case</i>." 50. Judgment <i>nunc pro tunc</i>: Vacating Proceedings. 51. Time of Taxation. 52. Common Costs: Costs of Increase. 53. General Costs of the Cause: Costs of Issues. 54. Removal of Judgments: Rules & Orders from Inferior Courts. 55. Taxation: Notice. 56. Bill of Costs: Affidavit of Increase. 57. Scale of Taxation. 58. General Rules: Discretion of Taxing Officer. 59. Review of Taxation. 60. <i>Allocatur</i>. 61. Amendments. |
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[1.] Personal actions^a are maintainable in any of the Superior Courts of Law; and in all cases in which previously to the Statute of Gloucester, the plaintiff

^a Including the *quasi* mixed action of ejectment, 3 & 4 W. 4, c. 27, s. 36.

could have damages,^b he is, under that statute, entitled to costs also. The same rule holds where damages are given by a subsequent statute,^c and though it be to a party grieved.^d This right as to the costs follows, as a rule, where any damages are found, however trivial they may be,^e and extends to a plaintiff suing *in forma pauperis*.^f Full costs are awarded upon all judgments on demurrer,^g whether to pleadings in bar, or in abatement only; and in all cases of *scire facias* for an award of execution.^h But common informers, whether suing *qui tam*, or for the whole penalty, are not entitled to costs,ⁱ unless the act of parliament enabling them to sue, expressly gives them costs.^j Costs are only awarded to^k and against^l parties to the action, or to some proceeding therein: in adverse^m proceedings they mean only those as between "party and party;" and there is not any distinction between costs generally, and full costs.ⁿ Where proceedings are amended, the costs resulting thereon are in the discretion of the Court.^o Where there is a feigned issue, costs are recoverable as in any other action, even though the statute directing it does not take any notice of the costs.^p In

^b 6 Edw. 1, c. 1; *Phillips v. Bacon*, 9 East, 298.

^c *Jackson v. Calesworth*, 1 T. R. 71; *Creswell v. Hoghton*, 6 T. R. 355; *College of Physicians v. Harrison*, 9 B. & C. 524.

^d *Tyte v. Glode*, 7 T. R. 268; *Mayor of Plymouth v. Werring*, Willes, 440.

^e *Brown et ux. v. Gibbons*, 2 Ld. Raym. 831; 1 Salk. 206; 7 Mod. 129.

^f *Gougenheim v. Lane*, 1 M. & W. 136; 4 Dowl. 482; 1 Gale, 343. ^g 3 & 4 W. 4, c. 42, s. 34.

^h *Ibid.*; and see *Brooke v. Booth*, 11 East. 387.

ⁱ *Cutler's Company v. Bushin*, 12 Mod. 46; *Skin*. 363; *S. C. Eaton v. Barker*, 1 Ventr. 133; *Anon.* Bull. Ni. Pri. 333.

^j *North v. Wingate*, Cro. Car. 559.

^k *Blewitt v. Tregoning*, 5 Dowl. 484.

^l *Hayward v. Gifford*, 4 M. & W. 194; 6 Dowl. 699; *Rex v. Staffordshire Justices*, 1 Dowl. 507.

^m *Doc d. Capps v. Capps*, 5 Dowl. 134; 3 Bing. N. C. 768; 4 Scott, 468.

ⁿ *Irwin v. Reddish*, 5 B. & A. 796; 1 D. & R. 413.

^o *Wall v. Lyon*, 9 Bing. 411; 2 M & Scott, 579; *Allan v. Kenning*, 3 M. & Scott, 80; *Willoughby v. Wilkins*, 2 Smith, 396.

^p *Fitzwilliam (Ld.) v. Maxwell*, 2 Marsh. 355; 7 Taunt. 31.

such a case the Court usually orders that the costs thereon shall be in its discretion:^a and where it is brought under the direction of the Court of Chancery, and a mere formal objection is taken by either party, that Court usually directs the person making it to pay all the costs.^r The costs usually are ordered to follow the verdict.^s And in these cases, though the point in controversy turns upon a grant from the Crown, yet if the queen is not named as a party, the party failing is liable to the costs,^t and the taxation refers to the time when the feigned issue was first ordered by consent of the parties.^u And where contradictory facts as to a return to a *Mandamus* were directed to be tried upon a feigned issue, and after it was prepared and delivered, the parties making such return abandoned the issue, and obtained a judge's order for staying the proceedings, and without prejudice to the question of costs, the Court ordered them to pay to the prosecutor his costs of preparing and delivering such issue.^v

Where, by a statute, double or treble costs are given, the mode of estimating them is this: first, to allow the party entitled the single costs, including the expences of witnesses, counsel's fees, &c. and then to allow him one half of the amount of the single costs; and without making any deduction on account of counsel's or Court fees.^w Treble costs are half of such half, and in addition.^x

[2.] The practice of the superior Courts of Law, as to costs, is for the main part uniform; and both as to the allowance^y and taxing of costs; their judges have a general and indiscriminate^z jurisdiction at chambers; and the taxing officers, *i. e.* the Masters,^a are guided by the same principles, and act under similar rules: they

^a *Hoskins v. Berkeley (Lord)*, 4 T. R. 402.

^r *Wray v. Barwis*, Peake, 69.

^s *Herbert v. Williamson*, 1 Wils. 324.

^t *Bagshaw d. Wynne v. Bangor (Bishop of)*, Hullock on Costs, 343.

^u *Thomas v. Powe'*, 1 Burr. 603; 2 Ld. Ken. 292.

^v *Rex v. Lancashire (Justices)*, 5 B. & A. 755; 1 D. & R. 485.

^w *Stanniland v. Ludlam*, 4 B. & C. 889; 7 D. & R. 494.

^x 1 Chit. 137 a, 139, 140, 141 a; *Thoroughgood v. Scrags*, Cro. Eliz. 582.

^y 3 & 4 W. 4, c. 42, s. 46.

^z 1 & 2 Vict. c. 45, s. 1.

^a 1 Vict. c. 30, s. 23.

follow express enactments, decided cases, and well known systems of practice.

[3.] There are certain proceedings preliminary to an action, and which have a direct reference as to the costs; as under 11 Hen. 7, c. 12, to admit the plaintiff *in formá pauperis*:^b under the 1 & 2 Vict. c. 110, s. 8, where the debtor is a trader^d within the Bankrupt Act^c. In the latter case, any single creditor for 100*l.*, two creditors for 150*l.*, or three or more creditors for 200*l.*; and with a view to an intended action for recovery of the amount, may call on the debtor for security, both as to the debt and the costs: an affidavit is filed in the Court of Bankruptcy as to the fact of the debt being justly due, and as to the debtor being a trader: the debtor is then served personally with a copy of the affidavit, and also with a written notice, requiring immediate payment. If he does not within twenty-one days after personal service upon him of such copy of the affidavit and of the notice, pay the debt, or secure or compound for the same to the satisfaction of the creditor, or enter into a bond with two sufficient sureties, approved of by a commissioner of bankrupts, to pay such sum and costs as shall be recovered thereon, or to render himself to the custody of the gaoler of the Court, according to the practice, or within such time and manner as the Court, or any judge, may after judgment therein direct; the debtor is to be deemed to have committed an act of bankruptcy on the twenty-second day after the service of such copy of the affidavit and of the notice, provided that a fiat issues thereon within two calendar months from the filing of such affidavit. The other preliminary proceedings before adverted to, are a written notice of an intended action^e against a justice of the peace for an act done by him as such, and *virtute officii*,^f and for which the costs allowed are 20*s.*: the same rule holds as to excises^g and custom house^h officers, sued as such. And in ordinary cases one letter from the creditor to the debtor, and demanding payment, is allowed for in taxing costs.ⁱ

^b *Foss v. Racine*, &c. 4 M. & W. 610. ^c 6 G. 4, c. 16.

^d 6 Geo. 4, c. 16, s. 2. ^e 24 G. 2, c. 44, s. 1.

^f *Wedge v. Berkeley*, 1 Nev. & P. 665.

^g 23 G. 3, c. 70, s. 30; 5 T. R. 1. ^h 24 G. 3, c. 47, s. 35.

ⁱ *Capel v. Staines*, 2 M. & W. 850; 5 Dowl. 770.

[4.] The commencement^k of every action, when effected in the Superior Courts of Law, must be by a writ of summons;^l and the writs issuable in continuation are of alias,^m pluries, testatum,ⁿ distringas,^o capias;^p and process of outlawry^q or waiver.^r But the provisions of the Uniformity of Process Act,^s and the Rules of Court as to the commencement of declarations, and the forms of issues, do not apply to causes removed here out of Inferior Courts, whether by writs of *pone*, *recordari facias loquelam*, *certiorari*, *habeas corpus*, or otherwise.

[5] Where the action is commenced in the Superior Courts, and for a debt;^t all process^u issued for its recovery must be indorsed with the amount of the debt claimed to be due, and also of the costs of the writ, copy, and service, and also with a notice that on payment thereof within four days after service proceedings will be stayed. The same rule holds as to all continued^v process; and when it issues against the acceptor^w of a bill of exchange, or the maker of a promissory note, the indorsement refers to the costs of the action against him only. This provision in favour of the debtor can only be made available by a payment within the time so prescribed.^x If the amount^y of the costs so indorsed is reduced on a taxation *above* one-sixth,^z the plaintiff's attorney is bound to pay the costs of the taxation.

^k 1 & 2 Vict. c. 110, s. 2.

^l 2 W. 4, c. 39, s. 1.

^m 2 W. 4, c. 39, s. 10, Sched. No. 4; *Gregory v. Desanges*, 3 Scott. 534; 5 Dowl. 193.

ⁿ R. M. 3 W. 4, (6—7).

^o 2 W. 4, c. 39, s. 3; R. M. 3 W. 4, (8).

^p 1 & 2 Vict. c. 110, s. 3, and Schedule.

^q 2 W. 4, c. 39, ss. 5, 6, 7.

^r *Summervil v. Watkins*, 14 East, 535.

^s 2 W. 4, c. 39.

^t *Davies v. Lloyd*, 3 M. & W. 69; 6 Dowl. 173.

^u R. M. 3 W. 4, (5); 1 Dowl. 383; 9 Bing. 444; 1 C. & M. 3.

^v *Gale v. Winks*, 5 Dowl. 348; 3 Bing. N. C. 294; 3 Scott, 667.

^w R. T. 1 Vict.

^x *Ward v. Greig*, 5 Dowl. 729; *Reg. Gen.* 4 Bing. N. C. 814; 3 N. & P. 379; 4 M. & W. 1; 6 Dowl. 647; *Ball v. Blackwood*, 6 Dowl. 589; 16 L. O. 205; *Vaughan v. Harris*, 3 M. & W. 542.

^y *Ward v. Gregg*, 5 Dowl. 729; *Bowbridge v. Slaney*, 2 Scott, 197; 2 Bing. N. C. 142; 4 Dowl. 140; 1 Hodg. 224.

^z R. H. 2 W. 4 [II].

Where the indorsement is amended^a under an order of a judge or a rule of Court; or if the writ of summons be amended with a view to saving^b the Statute of Limitations, the defendant has four days after^c such amendment, and after the costs of it, and of the application for it, are paid, to pay the debt and costs indorsed on the writ; and the rule is the same where a writ of *distringas*^d or a *capias*^e is issued. Where less than one-sixth is taken off upon a taxation, and an improper charge has been *wilfully* made by the plaintiff's attorney,^f the Court will not allow him the costs of the taxation: neither will they allow the spirit of the above rule to be defeated; and therefore, if the writ is in the first instance indorsed with a particular claim, and it is afterwards by the particulars of demand or otherwise reduced, the defendant will be allowed, even after declaration, upon an application before a judge, to stay all proceedings on payment of the latter sum only, and the costs as indorsed on the writ.^g But they will not prospectively,^h and with a view to an act of parliament relating to some Court of Requests, stay the proceedings, even though the debt is under 40s., and is sworn to be recoverable in such Court; because the mode pointed out in the enactment for taking the benefit of its provisions must be strictly adopted: and in all cases where, after the writ of summons has issued, the debtor pays the debt to the creditor, the former still remains liable, and may be proceeded against as to the costs of the action.ⁱ In all actions for a debt or sum certain, a judge at chambers has power to stay the proceedings on payment of the debt, and of the costs to be taxed; but for complying with this condition he has not any right to give time:^j he has also power to order the proceedings against the bail,

^a *Cooper v. Waller*; *Tabram v. Thomas*, -3 Dowl. 167; *Urquhart v. Dick*, 3 Dowl. 17.

^b *Horton v. Hundred of Stamford*, 2 Dowl. 96; 1 C. & M. 773; *Lakin v. Watson*, 2 Dowl. 633.

^c *Urquhart v. Dick*, 3 Dowl. 17. ^d 2 W. 4, c. 39, Sched. (3)

^e 1 & 2 Viet. c. 110, s. 3, and Sched.

^f *Holderness v. Backwith*, 6 Dowl. 392; 3 M. & W. 341.

^g *Parsons v. Pitcher*, 4 Bing. N. C. 306; 6 Dowl. 432.

^h *King v. Myers*, 5 Dowl. 687.

ⁱ *Wyllie v. Phillips*, 5 Dowl. 644; 3 Bing. N. C. 776.

^j *Kirby v. Ellison*, 2 Dowl. 219; *Kirby v. Ellier*, 2 C. & M. 315; 4 Tyr. 239.

upon a bail-bond given to the sheriff,^k or against bail on a replevin bond,^l or against parties in a replevin suit,^m to be stayed on payment of the real debt due, and the costs. Bail sued on a recognizance of bail, can, on rendering the principal within fourteen days after service of the writ of summons on themselves, and paying the costs of the writ and service,ⁿ have the proceedings stayed.^o In the case of outlawry or waiver, where real error can be suggested to the judge, the proceedings will be stayed on payment of costs as between "party and party," but otherwise^p they are ordered as between "attorney and client." And it is not any reason for not paying costs, that the debtor has had a receiver here.^r The Court has power, by rule, to stay the proceedings in favour of a surety in a bond for the tenant, under the Recovery of Tenements Act, and on such terms "as to costs, as are agreeable to justice."^s

[6.] Where the defendant is arrested by a writ of *capias* issued under 1 & 2 Vict. c. 110,^t he is entitled to his discharge out of custody on depositing the amount of the debt indorsed on the writ, and 10*l.* for the costs, with the bailiff who makes the arrest.^u The fees of the bailiff and of the undersheriff are regulated by the official scale of fees. The undersheriff is bound within six days next after the arrest, to indorse on the writ the true day of its execution;^w and if necessary, a judge at chambers will compel him to do so, and also to pay the costs of the application.^x An attachment against the sheriff, if regular,^y or an action or actions^z on the bail-

^k 4 Anne, c. 16, s. 20.

^l *Gingell v. Turnbull*, 3 Bing. N. C. 881.

^m 11 G. 2, c. 19, s. 23.

ⁿ *Horn v. Whitcombe*, 5 Dowl. 328. ^o R. T. 3 W. 4.

^p *Lewis v. Davidson*, 3 Dowl. 272; 1 C. M. & R. 655.

^q *Cross v. Trevanion*, Exch. 183*l.*

^r *Hunter v. Whitfield*, 3 Bing. N. C. 878; 6 Dowl. 70; *Lewis v. Davison*, 1 C. M. & R. 655; 3 Dowl. 372; 5 Tyr. 198.

^s 1 & 2 Vict. c. 74, s. 4. ^t s. 3.

^u 43 G. 3, c. 46, s. 2. ^w R. M. 3 W. 4, (4); 1 Dowl. 471.

^x *Moore v. Thomas*, 2 Dowl. 760.

^y *Rex v. Sheriff of Middlesex*, 4 Dowl. 673; 1 M. & W. 182.

^z *Stride v. Hill*, 4 Dowl. 709; *Crossby v. Innes*, 5 Dowl. 566; *Gale v. Hayworth*, 6 Dowl. 323; 1 W. W. & H. 91; *Clark v. Vestris*, 4 Scott. 391.

bond, can only be set aside on payment of costs; but in the latter case they are those of one action only.^a Where special bail are in due^b time put in, and with an affidavit as to their property, but not in substantial^c compliance with the form^d given, and as altered since,^e and they are rejected,^f the defendant is bound to pay the costs of the rejection. Where two^g former notices of bail have been given, and though they did not come up, or if there has been one^h successful opposition, the previous costs ought to be deposited before they can justify; and even if they are allowed to pass without making such deposit, the defendant is nevertheless entitled to his costs thereon.ⁱ In case of a deposit being made, the costs are taxed, and if sufficient, the master pays thereout to the plaintiff's attorney, his costs, and the surplus, if any, is returned to the defendant's attorney; but if it is not sufficient, the deposit is paid over to the plaintiff's attorney, and the balance is on the final taxation in the cause added to his costs; and it is, in any event of the suit, taxed for him absolutely. If the defendant, on his arrest, has made a deposit with the bailiff of the debt, and 10*l.* to answer costs, under 43 G. 3, c. 46,^j in lieu of bail, and he fails in afterwards paying it, and 10*l.* additional for the further costs into court, the deposit will become forfeited to the plaintiff. The defendant should always, therefore, get the sheriff to pay the deposit into Court, and in due time,^k under 7 & 8 G. 4, c. 71.^l

[7]. In order that the plaintiff may have the costs of the particulars of demand taxed for him, "as costs in

^a R. H. 2 W. 4, (30).

^b *Rex v. Wilson*, 3 Dowl. 255.

^c *Weller's bail*, 6 Dowl. 312; 1 W. W. & H. 76; *Benbow's bail*, 5 Dowl. 714.

^d R. T. 1 W. 4, Sched.

^e R. H. 2 W. 4 (s. 19).

^f R. T. 1 W. 4; *Brown v. Ahrenfeldt*, 7 Dowl. 46.

^g R. H. 2 & 3 G. 4; *Aldiss v. Burgess*, 3 B. & A. 759; *Blundell v. Blundell*, 5 B. & A. 533.

^h *Rex v. Sheriff of Middlesex*, 1 Taunt. 57; *Smith v. Cooper*, 1 Tyr. 378; *Passmore's bail*, 3 Dowl. 214; *Turley's bail*, 4 Dowl. 498.

ⁱ *Lewis v. Glossop*, 2 C. M. & R. 655.

^j s. 2.

^k *Rowe v. Softly*, 6 Bing. 634; *Stansford v. Mc'Cann*, 2 C. M. & R. 632; *Straford v. Love*, 3 Dowl. 593; *Hannah v. Willis*, 4 Bing. N. C. 310; 6 Dowl. 417; 5 Scott, 731.

^l s. 2.

the cause," they must, and to the extent of three folios,^m be delivered with the declaration, or with the notice of it, as the case may be ; but if furtherⁿ and better particulars are required by the defendant, he must generally pay the costs of them.

[8.] Where the defendant, on his being arrested by a judge's order under 1 & 2 Vict. c. 110, petitions^o the Court for the Relief of Insolvent Debtors for his discharge out of custody, if his estate and effects are, by order of that Court, vested in the provisional assignee ; he cannot as to the same action, be discharged out of custody by *supersedeas*, *non pros*, or judgment as in case of a nonsuit.

[9.] Where the declaration sets out a deed, letters testamentary, or letters of administration, and with a profert, and the defendant craves oyer thereof, he is entitled to inspect^p the originals, and have a copy^q thereof, and all documents^r connected therewith ; and if of a will, then a copy of that also^s must be furnished, but at the costs of the defendant.^t The whole of these proceedings may, if untruly set out on oyer by the defendant, be enrolled^u at the prayer of the plaintiff ; and in this case they stand at the head of his replication, and are taxed as part of the plaintiff's costs in the general costs in the cause.

[10.] With respect to pleadings, if an issue of *nul tiel record* be raised,^v or a *cassetur breve*^w entered as to a plea in abatement, there are not any costs ; but a mere *præ*.

^m R. T. 1 W. 4, (6.)

ⁿ *James v. Child*, 2 C. & J. 252 ; 2 Tyr. 302 ; 1 Dowl. 310.

^o 1 & 2 Vict. c. 110, s. 41.

^p *Canterbury (Archbishop of) v. Tulk*, 3 Bing. N. C. 789.

^q *Shepherd v. Shorthose*, 1 Stra. 412 ; *Hensloe's case*, 9 Rep. 38.

^r *In the goods of Henry Binches*, Curt., 286 ; *Sewercroft v. Day*, 3 Nev. & P. 670 ; *Doe d. Edwards v. Gunning*, 2 N. and P. 260.

^s R. M. 1654, (s. 15) ; Barn. 263.

^t *Theedam v. Jackson*, Barnes, 238 ; Sellon's Pr. v. 2, p. 264.

^u R. H. 2 W. 4, (44).

^v *Thomas v. Lloyd*, 1 Salk. 194 ; 1 Ld. Raym. 336 ; Comb. 482 ; *Toms v. Loyd*, 12 Mod. 195 ; *Anon. id.* 523 ; Ca. Prac. C. P. 36 ; *Garden v. Exon*, 6 Mod. 88 ; 2 Ld. Raym. 992.

^w *Allen v. Massey*, 1 Beames, 92, 190 ; 12 Mod. 145.

cipe in the office will not authorize a plea of the pendency of a prior action, and in abatement of a second; and therefore a record made up by the defendant to support it will be vacated,^x and with costs.

[11.] On a plea of payment into Court, whether as to a money demand,^y or of unliquidated damages^z under a judge's order with reference to the 3 & 4 W. 4, c. 42, s. 21, the plaintiff if he accepts it^a in satisfaction and discharge of the cause of action, in respect of which it is paid in, is entitled to so much^b of his costs, as are applicable thereto; and they must be paid within forty-eight hours after demand thereof,^c or judgment may be signed "as for want of a plea;" in which latter case, the costs of the proceedings as to and subsequent to the plea of payment into Court, are taxed for the plaintiff, as part of his "costs in the cause." If there are other pleas, then, in order to prevent a *non pros.*^d a *nolle prosequi*^e must be entered thereto. Where an excess^f beyond the amount paid into Court is proceeded for, the defendant may, notwithstanding the plea of payment into Court,^g shew that the business *i. e.* of an attorney or solicitor, was agreed to be done for costs out of pocket only.^h Several actions brought with reference to one general claim, as against several underwriters in a policy case, can only be consolidated by consent;ⁱ and where a consolidation takes place, and money is paid upon a plea into Court, the plaintiff even though he fails at the trial, has his costs up to the time of such payment; and as ap-

^x *Kirby v. Siggers*, 2 Dowl. 813.

^y R. T. 1 Vict.

^z R. H. 4 W. 4, (18).

^a R. T. 1 Vict.

^b *Baillie v. Cazelet*, 4 T. R. 579; *Skarratt v. Vaughan*, 2 Taunt. 266; *Coates v. Stevens*, 3 Dowl. 784; *Goodee v. Goldsmith*, 5 Dowl. 288.

^c R. H. 4 W. 4; Trin. 1 Vict.

^d *Topham v. Kidmore*, 5 Dowl. 676.

^e 3 & 4 W. 4, c. 42, s. 33.

^f R. T. 1 Vict.

^g *Jones v. Reade*, 5 Dowl. 216; 1 Nev. & P. 18; 5 Ad. & Ell. 529.

^h *Booth v. Howard*, 5 Dowl. 438; *Finlayson v. M'Kensie*, 3 Bing. N. C. 824; 6 Dowl. 71.

ⁱ *Hollingsworth v. Broderick*, 4 Ad. & Ell. 646; *M'Gregor v. Horsfall*, 6 Dowl. 338; 3 M. & W. 320.

plicable to the matter of the plea;^j and the same rule holds where several actions against the same defendant or several joint defendants are consolidated. The practice as to taxing costs upon a plea of payment into court, and upon which the plaintiff admits his whole claim to be satisfied, is thus; the master who acts as the taxing officer, marks the taxed costs in an *allocatur* upon the original plea, as delivered in the action.

[12.] Where an executor,^k administrator,^l heir,^m or devisee,ⁿ pleads *plene administravit*, or a like plea *præter* a particular sum of money; the plaintiff may take judgment thereon of assets *quando acciderint*; and if there is not any other plea, he may, if the action is "on promises," execute an inquiry of damages, and on its return (or in an action of debt, without any writ of enquiry) sign a species of final judgment and tax his costs,^o but subject to the above limitation.

[13.] In an action for infringing a patent, if the defendant does not at the time of his pleading, deliver under 5 & 6 W. 4, c. 83, s. 5, a notice of his objections against the validity of the patent, he will only be allowed to deliver a further and better particular of them, "on payment of costs;"^p and the same rule holds as to notices under the Bankrupt Act, of the intention of the defendant to dispute the trading, petitioning creditor's debt, and act of bankruptcy, or either of them.^q

[14.] A warrant of attorney to confess judgment,^r and a *cognovit actionem*^s must, since the recent act,^t in order to be valid,^u even as to costs, be attested by an attorney^v

^j R. H., 2 W. 4, (104); 1 Dowl. 197; 8 Bing. 304; 1 M. & Scott, 430; 3 B. & Ad. 389; 2 C. & J. 197; 2 Tyr. 350; 4 Bligh, N. S. 605.

^k 1 Saund, 333—337 b.

^l *Mara v. Quin*, 6 T. R. 1.

^m 1 Rolle, 57; Dyer, 373, b.

ⁿ 11 G. 4, and 1 W. 4, c. 47; 3 & 4 W. 4, c. 114.

^o *Cox v. Peacock*, 2 Scott, 125; 4 Dowl. 134; 1 Hodg. 272.

^p *Bulnoks v. Mackenzie*, 4 Bing. N. C. 127; 6 Dowl. 215.

^q 6 Geo. 4, c. 16, s. 90.

^r R. M. 42 G. 3, (Q. B.) M. 43 G. 3, (C. P.) *Id. Exch. Shaw v. Evans*, 14 East, 576; *Partridge v. Fraser*, 7 Taunt. 307.

^s 1 W. 4, c. 7, s. 7.

^t 1 & 2 Vict. c. 110.

^u 1 & 2 Vict. c. 110, s. 9.

^v 1 & 2 Vict. c. 45, s. 3; *Newton v. Spenser*, 4 Bing. N. C. 174; 1 Vict. c. 56.

of one of the three Superior Courts of law, and attending for the defendant and at his request; and this fact must so appear therein; and it will even then be void, if, on its face, it professes to charge "*in rem*"^w an ecclesiastical benefice.^x

[15.] If the defendant sets out on *oyer*, a deed or other instrument, and of which the declaration makes a *profert* but untruly; the plaintiff may, with a prayer for enrolment, insert it at the head of his replication; or he may if material to his case, set out therein on *oyer*, a deed or other instrument, of which a *profert* is made in the plea.

[16.] The nature of the issue as joined is material, with a view to the proper costs to be charged, and the proceedings on which they are allowed; upon a demurrer, those parts of the proceedings are only allowed for in costs, which apply to the demurrer, or which render such proceedings intelligible; as where the declaration contains several breaches, and the demurrer is to one or more of a greater number, the part demurred to must alone be inserted.^y The common forms of pleadings, and as given by the rules,^z are treated as separate counts,^a no other than the above parts of the demurrer book delivered to the defendant's attorney,^b are to be copied into the demurrer books delivered to the judges;^c and no costs are allowed on any additional parts, even as between "attorney and client."^d Four clear^e days before the day appointed for the argument on the demurrer, each of the parties must, under the pain of losing his costs thereof, deliver two copies of the demurrer books; the plaintiff must do so for the two senior judges of the court, and the defendant must do so for the two junior judges; if the latter makes a default in

^w *Saltmarshe v. Hewitt*, *Skrine v. Hewitt*, 1 Ad. & Ell. 812; 3 Nev. & M. 654.

^x *Vivian v. Blomberg*, 3 Bing. N. C. 311; 3 Scott, 681.

^y Q. B. C. P.; 8 & 9 G. 4.

^z T., 1 W. 4, Schedule.

^a *Jourdain v. Johnson*, 4 Dowl. 534; 5 Tyr. 524; 1 Gale, 312.

^b R. H. 4 W. 4, (5).

^c *Ibid.* 7.

^d *Jones v. Roberts*, 2 Dowl. 374.

^e *Darker v. Darker*, 2 Dowl. 88; *Rex v. The Justices of Herefordshire*, 3 B. & A. 501; *Zouch v. Empey*, 4 B. & A. 522.

doing so, the plaintiff, provided he delivers on the next^f day, the two copies, can insist on their being paid for or a deposit made for them by the defendant before the argument; and in such a case, the plaintiff's counsel should be furnished with an affidavit stating these facts, and with the dates in chronological order. Notices in writing^g of the objections^h intended to be insisted on in argument by the plaintiff, mustⁱ be left with the demurrer books for the judges; and another copy should be served upon the defendant's attorney. If the defendant is allowed either before^j or after^k the argument to amend his pleadings or withdraw his demurrer, the usual terms are "on payment of costs" by him.^l The fact of making the amendment and paying costs, constitute in such a case a condition precedent^m to taking ulterior proceedings. In taxing the costs upon an amendment, so much of the brief and of the demurrer books used for the argument as relate to the issues in fact, are not allowed for in costs,ⁿ and a brief for, and fees to one counsel are only allowed for.^o There are the same proceedings and costs allowed upon the argument of a special case,^p or upon error^q from an inferior court to the Court of Queen's Bench, or upon error in fact there, *coram nobis*, or in the Common Pleas, or the Exchequer of Pleas, *coram vobis*.

^f *Abraham v. Cook*, 3 Dowl. 215; *Fisher v. Snow*, 3 Dowl. 27; R. H. 4 W. 4, (7); *Sandell v. Bennett*, 4 Nev. & M. 89.

^g R. T. 11 G. 4. ^h *Whitmore v. Nichols*, 5 Dowl. 521.

ⁱ *Parker v. Riley*, 3 M. & W. 230; 1 H. & H. 5.

^j *Cooper v. Phillips*, 3 Dowl. 196.

^k *Atkinson v. Bayntun*, 1 Bing. N. C. 740.

^l *Brown v. Sayce*, 4 Taunt. 320; *Rex v. Archbishop of York*, 3 Nev. & M. 453; *Wood and another v. Smith*, 4 M. & W. 523.

^m *Doe v. Carter*, 8 Bing. 330; *Black v. Sangster*, 3 Dowl. 206; *Turner v. Gill*, 3 Dowl. 230.

ⁿ *Jones v. Roberts*, 2 Dowl. 374; 4 Tyr. 310.

^o 3 & 4 W. 4, c. 42, s. 34; *Smith v. Smith*, 4 Tyr. 2; *Shepherd v. Kealley*, 4 Tyr. 571; *Mostyn v. Champneys*, 1 Scott, 57; 3 Dowl. 105.

^p 3 & 4 W. 4, c. 42, s. 25; *Garland v. Jehyll*, 3 Bing. 330; Hil. 4 W. 4, (7); *Collins v. Gwynne*, 4 Dowl. 122; *Gosbell v. Archer*, 5 Nev. & M. 523; 2 Add. & Ell. 500; 1 Har. & Wol. 559.

^q R. H. 4 W. 4.

[17.] Where there is an issue by the record upon *nul tiel record*, there are two rolls: the *nul tiel* record roll, and the issue roll in the action. In the Common Pleas and Exchequer a brief is delivered to counsel, with instructions to pray judgment "*quod perfecit recordum*." There are not any books for the judges, in any of the courts. Where "peerage"^r is pleaded, the trial is made in the same manner, but by the records of parliament.^a

[18.] The issue, when joined "in fact," is always made up and delivered^t in the form prescribed by the Rules of Court.^u

[19.] If the defendant gives notice of trial by proviso, and fails to countermand or to continue in due time, the plaintiff is entitled to his costs of the day thereon.^v

[20.] The first step after delivery of the issue where "in fact," is to require the opposite party to make, and with a view to saving costs,^w admissions as to the proof at the trial of printed documents, written documents, examined copies, foreign^x documents, and the service of notices. This proceeding is, with regard to the costs allowed for proof as to such proceedings, an indispensable course.^y In the first instance, a written notice is given to inspect the proposed documents and at a specified time and place, and also requiring the admissions. If a consent to do this is for forty-eight hours withheld, the opposite party must be served with a summons and requiring him to appear before a judge and make the admissions called for by the notice. The judge on the hearing, has power to give time for further inquiry and examination, or he may impose suitable terms; or, if he thinks the application unreasonable, he indorses the summons accordingly; and he can by his order direct the costs of proving the documents to be payable, and

^r *Digby v. Earl of Stirling*, 1 Dowl. 248; 1 M. & Scott, 116; 8 Bing. 55; *Smart v. Johnson*, 6 Dowl. 90.

^a *Viscount Purbeck's case*, Ca. Parl. 3; *Slane Peccage*, 10 Bligh, 1.

^t R. H. 4 W. 4, (5).

^u *Ibid.* Schedule.

^v *Lowe v. Wyatt*, Exch. 1838, MS.

^w R. H. 4 W. 4, (20); *Tynn v. Billingsley*, 3 Dowl. 810; 3 & 4 W. 4, c. 42, s. 15.

^x *Smith v. Bird*, 3 Dowl. 641; 1 Hodges, 96.

^y R. H. 4 W. 4, (20); *Edmunds v. Groves*, 2 M. & W. 642; 5 Dowl. 776; *Lewis v. Howell*, 5 Ad. & Ell. 769.

whatever may be the result of the action by the party refusing such admission,^z provided the judge or other officer trying the cause, indorses upon the notice that such documents were proved to his satisfaction. The costs of this application, the production, and of the inspection, are in the discretion of the judge before whom the summons is heard; and if he does not interfere, (and he usually does not do so) they stand as "costs in the cause."

[21.] The next proceedings with a view to costs, are those preparatory to the trial; the witnesses are required to attend and give evidence by writs of *subpœna*,^a and where a document is required to be produced, a *duces tecum* clause is inserted therein; and a defendant, or one of several defendants, having in his possession, custody, or power, a document so required, may be served with a *subpœna* containing such a clause.^b The witness is, unless he has been previously subpœnaed and paid by the other side,^c to have tendered to him his "reasonable costs and charges, according to his countenance or calling, and having regard to the distance;"^d but they cannot be recovered against the attorney by whose authority the writ of *subpœna* is served.^e Within the bills of mortality,^f the necessary costs and expenses are only 1*s.*; but attorneys, solicitors, and medical men, always in practice receive 1*l.* 1*s.* If the witness is in prison, a *habeas corpus ad testificandum* must be issued;^h the expenses of the gaoler and of such witness are paid to them, and allowed for in costs. If an alteration in the pleadings by an amendment of them, renders certain witnesses, already subpœnaed by the plaintiff, unnecessary, he must

^z 3 & 4 W. 4, c. 42, s. 15.

^a *Wakefield v. Gall*, Holt, 526; *Milson v. Day*, 3 M. & P. 333; *Malcolm v. Day*, 3 J. B. Moore, 579.

^b *Amey v. Long*, 9 East, 473; *Colley v. Smith*, 4 Bing. N. C. 285; 5 Scott, 700; 6 Dowl. 399.

^c *Bittley v. McCleod*, 5 Dowl. 451; 3 Bing. N. C. 405; 4 Scott, 131.

^d 5 Eliz. c. 9, s. 12.

^e *Robins v. Bridge*, 3 M. & W. 114; 6 Dowl. 140.

^f *Jacob v. Hungate*, 3 Dowl. 456.

^g Directions to the taxing officers, March, 1834.

^h 44 G. 3, c. 102, s. 1; 1 W. 4, c. 22, s. 6; *Leigh v. Sherry*, 2 Moore, 33; *Rex v. Pilgrim*, 4 Dowl. 89; *In the matter of Sir Edward Price*, 4 East, 587.

in order to obtain his costs as to them, use reasonable diligence^l to prevent their attendance. The costs of a rule or order for the examination of witnesses by a commission or otherwise, under 13 G. 3, c. 63,^j or 1 W. 4, c. 22,^k are, unless otherwise directed thereby, or by the judge who tries the cause "costs in the cause;"^l and there is a like power^m over the costs of foreign witnesses, and as to the interpreter,ⁿ and also as to those incurred by the commission.^o If a view be ordered, the costs of it are in the first instance^p borne by the party who obtains it, but allowed for in the costs.

[22.] The record of *nisi prius* and the writ of trial, must be made up according to the forms prescribed,^q and neither of them ought to contain an issue in abatement already disposed of,^r or other superfluous proceedings. The jury process, *i. e.* the *venire* or the *habeas corpora juratorum*, or the *dis'ringas juratores*, may, if the return has passed before the trial, be amended, and under a judge's order *ex parte*, and without costs.^s

[23.] The place of trial must be according to the venue, as stated in the margin of the declaration; this, in transitory actions, is for the most part in the discretion of the plaintiff, and where he is an attorney and sues in person, and lays it in Middlesex, it cannot be changed;^t in other cases, where the action is upon a bill or promissory note, or other written instrument, and so declared on, the Court will not interfere with a venue; nor where laid for speedy trial in Surrey or other place, will

ⁱ *Allport v. Baldwin*, 2 Dowl. 599.

^j sect. 44.

^k sect. 1.

^l *Prince v. Samo*, 4 Dowl. 5; *Clay v. Stephenson*, 5 Nev. & M. 318; 1 H. & W. 409; *Bridges v. Fisher*, 1 Scott, 485; 1 Bing. N. C. 510; 1 Hodg. 36; 1 W. 4, c. 22, s. 9.

^m *M'Alpine v. Coles*, 1 C. & M. 795; 3 Tyr. 871; 2 Dowl. 299.

ⁿ *Clay v. Stephenson*, 2 Nev. & P. 189.

^o *Muller v. Hartshorn*, 3 B. & P. 556.

^p 6 G. 4, c. 50, ss. 23, 24; *Hodinot v. Cox*, 8 Fast, 268; R. Hil. 2 W. 4, (63); *Taylor v. Thompson*, 7 Bing. 403; 1 Dowl. 218; 5 M. & P. 255.

^q R. H. 4 W. 4, and Schedule.

^r *Pepper v. Whalley*, 4 Ad. & Ell. 90.

^s R. H. 4 W. 4, (18).

^t *Pye v. Leigh*, 2 W. Bla. 1065; *Mounsey v. Watson*, 7 B. & C. 683; *Harrington v. Page*, 2 Dowl. 164.

they change it, though the witnesses and parties live in London;^u unless a clear case of oppression can be made out;^v and where from the fact of the venue being laid in a city or town which is a county of itself, and in which the assizes are in practice never held, the trial is ordered to be had in the next adjoining county at large;^w or where in a local action, there is by a judge's order, a suggestion entered on the record for a trial in another county,^x than that where the venue is laid; the extra costs occasioned thereby are always taxed as "costs in the cause."

[24.] Where the cause is made a *remanet* either at the sittings in, or after term, or at the assizes, the plaintiff is, if he ultimately succeeds in the action, and obtains the "general costs of the cause," entitled to the refresher fees, costs of witnesses, and of the attendances.^y The same rule holds where the cause is referred at a former trial, but ineffectually, and without any fault in the plaintiff.^z But they are not allowed where the jury sworn at the former trial was discharged by the authority of the judge.^a

[25.] Where the trial is put off at the instance of the defendant, the ordinary condition imposed upon him is the payment of the costs of doing so, and of the application. These costs include refresher fees for counsel.^b If the client is responsible, the application is granted upon his undertaking to pay the costs when taxed, and which is inserted in the rule or order; but if he is irresponsible, the undertaking of the attorney is commonly given; or a deposit to answer for the probable amount

^u *Vere v. Moore*, 3 Bing. N. C. 261; 1 Scott 646; 5 Dowl. 367.

^v *Davies v. Lowndes*, 4 Bing. N. C. 711.

^w 38 G. 3, c. 52, ss. 1, 9.

^x 3 & 4 W. 4, c. 42, s. 22; *Briscoe v. Roberts*, 3 Dowl. 434; *Doe v. Harner*, 1 H. & W. 80; *Bell v. Harrison*, 1 Gale, 269; 4 Dowl. 181; 2 C. M. & R. 733.

^y *Standen v. Hall*, 1 Ld. Ken., 338; *Sayer*, 272; *Lord Mountcharles v. York*, *Ibid.* 341; *Sparrow v. Turner*, 2 Wils. 366; *Harrison v. Barnett*, 1 Dowl. 627.

^z *Burchell v. Bellamy*, 5 Burr, 2693.

^a *Secley v. Powers*, 3 Dowl. 372; 1 H. & W. 119; *Watts v. Spurgen*, 4 Dowl. 575.

^b *Bourne v. Minchin*, 1 Alcock & Napier, 144 (Irish).

of costs, is made. Even at this late stage of the proceedings, an order may be obtained by the defendant from a Judge for their being stayed on payment of the debt and the costs; so also in an action of replevin, in which case, when made in favour of the plaintiff,^c it is on payment of the value of the goods distrained, not exceeding the rent due and the costs. In such an event, the costs incurred by the plaintiff, or in replevin by the defendant, in passing and entering the record of *nisi prius*, are peculiarly in the discretion of the taxing officer.^d

[26.] Generally speaking, in any case of difficulty, two counsel are and ought to be allowed for the plaintiff, and especially if a Queen's Counsel, or a counsel having precedence within the Bar, was employed for him; as, except in a *formd pauperis* action,^e he must have a junior counsel with him to open the pleadings.^f In really important cases, an opinion upon the evidence requisite at the trial, and a consultation between the counsel, are allowed for in costs;^g and where a writ of trial is directed to, and heard before a Judge of a Court of Record, and in which counsel alone practise,^h as the Sheriff's Court of London, the Palace Court, the Court of Passage at Liverpool, or other Court of Record, a brief for counsel and a fee to him of 1*l.* 1*s.*, and to his clerk of 2*s.* 6*d.* are allowed.

[27.] At the trial of the cause, costs do not immediately become a question, except where there arises a variance in the *nisi prius* record from the evidence adduced, and this whether written, or verbal only. In this event, the Judge may amend, and on such terms as he thinks reasonable, as to costs and otherwise;^j if the variance is very slight^k and not material to the merits of the cause,^l and could not have prejudiced the defence, the amendment is *without* costs. The most important amendment which is here made, and affecting costs, is

^c *Gingell v. Turnbull*, 3 Bing. N. C. 881; 5 Scott, 153.

^d *Keen v. Smith*, 5 Dowl. 286; 2 M. & W. 85.

^e *James v. Harris*, 7 Car. & P. 257.

^f 2 Tidd's Practice.

^g Directions to Taxing Officers, March, 1834.

^h *Ibid.* ^j 3 & 4 W. 4, c. 42, s. 23.

^k *Freeman v. Arkhill*, 1 C. & P. 137; *Hanbury v. Ella*, 3 Nev. & M. 439; *Doe v. Errington*, 3 Nev. & M. 646; 1 A. & E. 758.

^l *Hemming v. Parry*, 6 C. & P. 580.

when,^m upon a variance arising, the Judge directs the jury to find the facts *specially*.ⁿ The doing so, in effect raises a new and artificial issue upon the record, and which must be regarded as materially affecting costs, with reference to "several issues." These regulations extend to a writ of trial.^o The following are instances well deserving of attention, with reference to the nature of the issue. 1. Where the contract set out in two or more counts, is for two or more specific matters. Here, one proved for the plaintiff may be valid: and another so found, may be bad in law; which causes a misjoinder. To avoid this difficulty, he must take his verdict upon the valid part of his declaration only;^p and even a finding in favour of the plaintiff for more than his evidence entitled him to, is not desirable, for it may induce the defendant to move for a new trial. 2. Where there are several breaches upon a bond with a penalty, for the performance of covenants or conditions, and either assigned or suggested under 8 & 9 Will. 3, c. 11, s. 8, the same remarks apply; and therefore, in order to prevent a trial upon counts or breaches bad in law, the plaintiff should as early as possible after the error is discovered, enter under 3 & 4 W. 4, c. 42,^q a *nolle prosequi* thereto. 3. In actions of tort, as in trespass *de bonis asportatis*, or trover, where different articles are inserted by name, each of them really creates an issue,^r and even though the plea is only "not guilty." 4. In case for slanderous words, where they are not actionable in themselves; the witnesses in support of the speaking of the words, and of the special damages as stated in the declaration to

^m 3 & 4 W. 4, c. 42, s. 24.

ⁿ *Guest v. Elwes*, 5 Ad. & El. 118; 2 Nev. & P. 230; 2 H. & W. 34; *Frankham v. Earl of Falmouth*, 4 Nev. & M. 330; 2 Ad. & El. 452; 4 Dowl. 65.

^o *Hill v. Salter*, 2 Dowl. 380.

^p *Routledge v. Abbot*, 3 Nev. & P. 560.

^q s. 33; 1 Saund. 207; *Bertram v. Gordon*, 6 Taunt. 444; 2 Marsh. 144; *Fleming v. Langton*, 1 Stra. 532; *Duperoy v. Johnson*, 7 T. R. 473; *Bowden v. Horne*, 7 Bing. 716.

^r *Cox v. Thomason*, 1 Dowl. 572; *Knight v. Brown*, 1b. 730; *Doe v. Webber*, 1 H. & W. 10; 4 Nev. & M. 381; 2 Ad. & El. 448; *Doe v. Errington*, 4 Dowl. 602; 1 H. & W. 502; *Daubuz v. Rickman*, 4 Dowl. 129; 1 Scott, 564; 1 Hodg. 75; *Bennison v. Davison*, 3 M. & W. 179.

have arisen therefrom, are alike material; and each distinct part of the declaration, whether as to the words, or the special damage, raises a distinct issue;^s and therefore no more of either averments than can be proved by the evidence, should be alleged in the declaration.^t 5. Where the action is brought by the husband alone, and for a special damage sustained by him in consequence of an injury done to his wife,^u the consequential damage forms the very essence of the case; and therefore such parts of it as are alleged in the declaration, are proved by evidence, and a verdict found upon them, will be allowed in costs. 6. Where an action "on the case"^v is brought for any injury done under "the Recovery of Tenements' Act;"^w and merely for an informality in some proceeding under the warrant^x to obtain, and in obtaining possession by the express provisions^y of the statute, the only issue is upon the special damage; and if it is not proved as laid, the defendant is to be entitled to a verdict. In such a case, therefore, the plaintiff must prove by evidence the facts set out in the narrative part of his declaration, and also some part of the special damage. 7. Where the declaration contains matter of inducement,^z the costs of proving it (unless put in issue by the plea, or material in proof, as, if in slander, the evidence is explanatory, and as to the plaintiff's professional reputation.^a) are not allowed in costs; and it is necessary to remark, that in an action "on promises" *i. e.* upon a special *assumpsit*, the general issue does not put in issue the facts which form the "consideration" for the promise;^b and in an action on the

^s *Lopes v. De Tastet*, 3 B. & B. 292; 7 J. B. Moore, 120.

^t *Surman v. Shillito*, 3 Burr. 1688; *Saville v. Jardine*, 2 H. Bla. 531; *Browne v. Gibbons*, 1 Salk. 206; 1 Ld. Raym. 831; *Collier v. Gaillard*, 2 W. Bla. 1062; *Grenfell v. Pierson*, 1 Dowl. 406; *Goodhall v. Ensell*, 1 Gale, 147; 3 Dowl. 743.

^u *Harbin v. Green*, Hob. 186; *Norton v. Norton*, 47 Edw. 3, 9. pl. 5; *Anon.* 1 Sid. 346, pl. 11; 1 Lev. 140.

^v Comyn's Dig. vol. 1.

^w 1 & 2 Vict. c. 74.

^x *Ibid.* s. 1.

^y *Ibid.* s. 6.

^z R. H. 4 Wm. 4, Pleadings in particular actions.

^a *Andrews v. Thornton*, 8 Bing. 431; 1 M. & Scott, 670.

^b *De Pinna v. Polhill*, 8 C. & P. 78; *Smith v. Parsons*, *Ib.* 199; *Raikes v. Todd*, 1 Per. and D. 138.

case, the plea of the general issue—not guilty—merely denies the wrongful act as charged.

[28.] There are four instances, in which either from the professional character of the plaintiff; the nature of the debt; or the state of the pleadings, the plaintiff is entitled to costs, however trivial the debt or damages may be; and this even though there are legislative enactments affecting or controlling the rights of others, in general cases: 1. An attorney has a right to sue in the Court where he has been and remains admitted as such,^d and though for the most trifling claim;^e for the acts of parliament relating to Courts of Request do not, except by express words and which are not usual, bind him. 2. The balance of an account originally exceeding the amount for which the Court of Requests has jurisdiction,^f is not, unless by express enactment, within its jurisdiction.^g 3. Where the freehold in, or possession of land, was at any time,^h or remains directly in issue upon the pleadings, any damages, though under 40s., will carry full costs. Thus where a right to take water from a well by reason of the occupation of a dwelling-house, and for its more convenient occupation is alleged; an issue traversing the right “to the use of the well,” is an issue as to an “interest in land.”ⁱ The rule is the same where the plea denies the possession.^k 4. Where to a declaration in trespass, the plea justifies the battery, *e. g.* “as to assaulting, seizing,^l laying hold of, and imprisoning.”

^c *Wright v. Latson*, 2 M. & W. 739; 6 Dowl. 146; *Lewis v. Alcock*, 3 M. & W. 188; 1 H. & W. 17; 6 Dowl. 389.

^d *Johnson v. Bray*, 2 B. & B. 698; 5 Moore, 622; *Board v. Parker*, 7 East, 46; *Dyer v. Levi*, 1 H. & W. 640; 4 Dowl. 630; *Wright v. Skinner*, 1 Gale, 378; 4 Dowl. 745.

^e *Lewis v. Ker*, 5 Dowl. 447; 2 M. & W. 226; *Prior v. Smith*, 6 Dowl. 299; 1 W. W. & H. 65.

^f *Porter v. Philpot*, 14 East, 344; *Jenkinson v. Norton*, 5 Dowl. 74.

^g *Green v. Boulton*, 4 B. N. C. 308; 6 Dowl. 434; 5 Scott, 746.

^h *Thomas v. Davis*, 3 Nev. & P. 567; 8 Ad. & El. 698.

ⁱ *Tyler v. Bennett*, 5 Ad. & Ell. 377.

^k R. H. 4 Wm. 4, (Trespass). *Littlewood v. Wilkinson*, 9 Price, 314; 2 Bing. N. C. 106; *Furnell v. Young*, 3 M. & W. 288; 6 Dowl. 347; 1 H. & W. 22; *Pugh v. Roberts*, 6 Dowl. 561; 3 M. & W. 456.

^l *Rawlings v. Till*, 3 M. & W. 28; 6 Dowl. 159; *Bone v. Dawe*, 5 Nev. & M. 230; 1 H. & W. 311.

[29.] The costs of a special jury^m struck at the instance of the plaintiff, are allowed, where he obtains a verdict; providedⁿ the judge who tries the cause, immediately afterwards, and on the back of the *nisi prius* record, certifies that it was "a cause proper to be so tried;" and this is usually done in libel cases, where there is a plea of justification.* These costs are not usually viewed as "costs in the cause;" and therefore will not be included in an agreement for "all costs;"^p as they ought to be mentioned by name. The costs of a good jury (sometimes used on a writ of inquiry) are allowed on taxation.^q Where the special jury are struck and summoned at the instance of the defendant, the plaintiff is, if he succeeds upon the trial, entitled to his extra costs occasioned thereby.^r

[30.] In the three following cases the plaintiff recovering less than 40*s.* damages, does not recover more than the same amount of costs; unless there is a certificate granted in his favor by the Judge who tries the cause. 1. In trespass to land^s or a dwelling-house, where the freehold or possession is not directly in issue,^t *e. g.* as upon pleading (since the New Rules as to pleading) not guilty;^u leave and licence;^v entry to distrain for rent;^w a special plea not going to the possession;^x or not putting

^m *Waggett v. Shaw*, 3 Campb. 316; *Orme v. Crockford*, 1 C. & P. 537. ⁿ 6 G. 4, c. 50, ss. 30, 36.

• *Roberts v. Brown*, 6 C. & P. 757.

^p *Bell v. Tainthorp*, 2 Dowl. 518.

^q R. H. 2 W. 4, (101); *Price v. Williams*, 5 Dowl. 160.

^r *Jones v. Tobin*, 4 Bing. N.C. 123; 5 Scott, 440; 6 Dowl. 251,

• 22 and 23 Car. 2, c. 9, s. 136; *Clegg v. Molyneux*, 2 Dougl. 780; *Cockerill v. Allanson*, Hullock on Costs, 76; *Doe v. Davies*, 6 T. R. 593; 1 Esp. 358; *Stead v. Gumble*, 7 East, 325; 3 Smith, 248; *Flint v. Hill*, 11 East, 184.

^t *Adlen v. Grinaway*, 6 T. R. 281; *Gregory v. Ormerod*, 4 Taunt. 98; *Thomas v. Davies*, 8 Ad. & El. 598; 3 N. & P. 567.

^u *Purnell v. Fung*, 3 M. & W. 288; 6 Dowl. 317; 1 H. & W. 22; *Smith v. Edwards*, 4 Dowl. 621; *Hughes v. Hughes*, 1 Gale, 302; 4 Dowl. 532; *Patrick v. Cotterick*, 4 M. & W. 527; 7 Dowl. 201.

^v *Redridge v. Palmer*, 2 H. Bla. 2; *Peddel v. Kidder*, 7 T. R. 659.

^w *Doe v. Davis*, 6 T. R. 593.

^x *Dunmage v. Kemble*, 5 Dowl. 478.

it in issue,^y or not guilty in an action for the mesne profits.^z But he obtains full costs if the Judge trying the cause, certifies at any time before the costs are taxed, and under his hand,^a on the back of the *nisi prius* record, that the freehold or title was chiefly in question;^b as where the defendant claimed title when he committed the trespass. Full costs are also allowed in trespass to land, where the Judge certifies that the trespass was "wilful and malicious;"^c but this is not usually done, as to an act in the exercise of a *bond fide* disputed right;^d nor unless a previous notice not to trespass was given to the defendant;^e or the case is of an aggravated character. This certificate may be given at any time before costs are taxed.^f The same law holds, where the defendant committing the trespass to land was an inferior tradesman,^g apprentice, or other dissolute person,^h and so described in the declaration,ⁱ hawking, hunting, fishing or fowling, in the plaintiff's land; and such fact is proved at the trial, and certified on the *nisi prius* record by the Judge.^k 2. In trespass,^l for an "assault and battery,"^m where

^y *Patrick v. Colerick*, 4 M. and W. 527; 7 Dowl. 201.

^z *Doe v. Davis*, 6 T. R. 593.

^a 22 & 23 Car. 2, c. 9, s. 136; *Johnson v. Stanton*, 2 B. and C. 621; 4 D. and R. 156; *Swinglehurst v. Altham*, 3 T. R. 136; *Anon.*, 1 Chit. 185; *Ward v. Mallinder*, 5 East, 489; 2 Smith, 63.

^b *Johnson v. Stanton*, 2 B. and C. 621; 4 D. and R. 156; *Hamber v. East*, Peake's Add. Cas. 236.

^c 8 & 9 W. 3, c. 11, s. 4; *Tipping v. Coot*, 1 Selw. Ni. Pri. 41, n.; *Anon.*, Woodf. L. and T. 549; *Lyttleton v. Cross*, 4 B. and C. 117; 6 D. and R. 81.

^d *Good v. Watkins*, 3 East, 495.

^e *Reynold v. Edwards*, 6 T. R. 11; *Swinerton v. Jervis*, 3 East, 497, n.; *Rudge v. Bond*, *Ibid*; *Beavan v. Reynolds*, Peake's Add. Cases, 217; *Good v. Watkins*, 3 East, 495.

^f *Ford v. Parr*, 2 Wils. 21; *Woolley v. Whitby*, 2 B. and C. 580; 4 D. and R. 147; *Swinerton v. Jervis*, 2 Tidd's Pr. 1004; 3 East, 497, n.; *Grundry v. Sturt*, 1 T. R. 636; *Harper v. Carr*, 7 T. R. 448. ^g 4 & 5 W. & M., c. 23, s. 10.

^h *Buxtone v. Mingay*, 2 Wils. 70.

ⁱ *Pellant v. Roll*, 2 W. Bla. 900.

^j *Dickenson v. Pearson*, Hullock on Costs, 93.

^k 4 & 5 W. 3, c. 23, s. 10; *Pellant v. Roll*, 2 W. Bla. 900.

^l *Patrick v. Colerick*, 4 M. and W. 527; 7 Dowl. 201.

^m 22 & 23 Car. 2, c. 9, s. 136.

the battery is not justified upon the pleadings ;^u if the Judge who tries the cause does not certify under his hand, on the back of the *nisi prius* record, that an "assault and battery was sufficiently proved;" less than 40*s.* damages will not carry full costs. 3. Where an action is brought under the "Recovery of Tenements Act,"^o for a special damage,^p and the damages found by the jury do not exceed 5*l.*; full costs are only allowed, provided the Judge certify that "full costs ought to be allowed."

[31.] In an action brought upon a judgment given for the plaintiff in the former action,^q there are not any costs;^r unless they are ordered by a judge,^s or by the Court; and they will not be awarded where the defendant was superseded out of custody by reason of the plaintiff's laches; even although the defendant has by sham pleading, created expence and delay.^t In an action for any matter done under the act, as to malicious injuries to property;^u and though the plaintiff recovers damages, yet he is not entitled to any costs, unless the Judge trying the cause, certifies his approbation of the action and of the verdict obtained thereupon:^v and in actions brought for a seizure under the laws as to the customs,^w there are not any costs, if the judge certifies that there was a probable cause for the seizure;^x but this provision does not apply to injuries accompanying the seizure.^y So in an action for words slanderous in themselves,^z or by reference to a trade,^a or profession,^b if the damages are under 40*s.* there

^u *Lockwood v. Stannard*, 5 T. R. 482; *Daubney v. Cooper*, 10 B. and C. 830; 5 M. and R. 325; *Briggs v. Bogrim*, 2 Bing. 333; *Purcell v. Hall*, 3 Nev. and P. 564; 8 Ad. and El. 602.

^o 1 & 2 Vict. c. 74.

^p s. 6.

^q 43 G. 3, c. 46, s. 4.

^r *Bennet v. Neale*, 14 East, 343.

^s *Jones v. Lake*, 8 C. and P. 395.

^t *Hall v. Pierce*, 5 Dowl. 603.

^u 7 & 8 G. 4, c. 30.

^v s. 41.

^w 19 G. 2, c. 34, s. 16; 23 G. 3, c. 70, s. 29; 26 G. 3, c. 40, s. 31.

^x *Sullivan v. Montague*, 1 Dougl. 106.

^y *Baldwin v. Tankard*, 1 H. Bla. 28; *Laugher v. Bressitt*, 5 B. and A. 762; 1 D. and R. 417.

^z 21 Jac. 1, c. 16, s. 6; *Surman v. Shelleto*, 3 Burr. 1688.

^a *Goodall v. Ensell*, 2 C. M. and R. 249; 3 Dowl. 743; 1 Gale, 147; *Halford v. Smith*, 4 East, 567.

^b *Turner v. Horton*, Willes, 438; *Grenfell v. Pierson*, 1 Dowl. 406.

is only the same amount of costs. And is debt by the parson, rector, vicar, or lessee of tithes, great or small, (and being predial,^e) for not setting them out; in case the jury find, or after a demurrer and a writ of inquiry thereon, the single value is found at more than 6*l.* 13*s.* 4*d.*; there are not any costs; but if they are found at 6*l.* 13*s.* 4*d.* or less,^d there are full costs.

[32.] In actions for any debt or sum certain,^e (and not being for unliquidated damages,^f) where the amount found by the jury at the trial, or recovered in the action,^g does not exceed 20*l.*,^h the costs are taxed on a reduced scale, and termed the second scale of costs;ⁱ unless the Judge who tries the cause^j certifies before^k taxation, that it was a proper cause to be tried before him; and he ought to do so in an action upon a building contract, where the testimony is conflicting.^l The Judge may exercise this power,^m though the verdict was taken subject to an award;ⁿ or the certificate of the Master,^o or other person. But if the Judge dies before the arbitrator's certificate is made known to him, the Court has not any power to make an order for full costs.^o And where in an action by a patentee for the infringement of his patent,^p he obtains a verdict; and the Judge certifies that its validity came into question upon the trial, he is entitled to treble costs.

[33.] There are three instances in which, in respect of the pleadings, and also of the evidence, a certificate from the Judge who tries the cause, is necessary with a

^e 8 & 9 W. 3, c. 11, s. 3; *Barnard v. Moss*, 1 H. Bla. 107; *Bale v. Hodgetts*, 1 Bing. 182; 7 J. B. Moore, 602.

^d *Pedley v. Frampton*, 2 Chit. 155.

^e 3 & 4 W. 4, c. 42, s. 17.

^f *Croft v. Miller*, 3 Bing. N. C. 975; 6 Dowl. 73.

^g *Cook v. Hunt*, 7 Dowl. 397.

^h *Savage v. Lipscomb*, 5 Dowl. 385.

ⁱ Directions to Taxing Officers, March, 1834.

^j *Noles v. Fraser*, 3 Dowl. 339; *Southwell v. Bird*, 7 Dowl. 557.

^k *Ivey v. Young*, 5 Dowl. 450.

^l *Broggref v. Hawke*, 3 Bing. N. C. 280.

^m *Wallen v. Smith*, 3 M. and W. 136; 6 Dowl. 163; 5 M. and W. 159; 7 Dowl. 394; *Holton v. Latter*, Exch. 1838, MS.

ⁿ *Astley v. Joy*, 1 P. and D. 460; 3 Dowl. 339; *Hallen v. Smith*, 7 Dowl. 394; *Southwark v. Bird*, *Ibid.* 557.

^o *Parker v. Serle*, 6 Dowl. 334; 1 H. and W. 4.

^p 5 & 6 W. 4, c. 83, s. 3; *Losche v. Hague*, 7 Dowl. 495.

view to the costs thereof. 1. Where the plaintiff sues as an assignee of a bankrupt,^q and there are pleas by the defendant, putting it in issue, and also a notice from the defendant for the plaintiff to prove the petitioning creditor's debt, the trading, and the act of bankruptcy, or either of them; in such a case, upon a verdict for him, the certificate of the judge who tries the cause as to the proof having been made, entitles him to the costs as to such proof, and they are added to the "general costs of the cause." So where the defendant obtains a verdict; the plaintiff, where there is such a certificate, is entitled to costs *pro rata* as to this limited proof; but he is not so where he becomes nonsuited.^r 2. Although the plaintiff fails at the trial, he is nevertheless entitled to his costs of proving the documents contained in the notice to admit, and pursuant to the Judge's order; provided the Judge certifies that they "were proved at the trial to his satisfaction."^s 3. Where particular counts^t are objected to by the defendant, as being for one same identical cause of action, and are specially allowed by a judge, but subject to costs; unless the judge who tries the cause certifies that upon each of them a *bond fide* separate ground of complaint or claim has been established by evidence.

[34.] In an action by an executor or administrator, upon a cause of action arising wholly^v to the testator or intestate; the executor or administrator is, if he fails in the action, liable to costs;^w unless the Court or any^x Judge make an order to the contrary. This is, however, only done,^y where the defendant has by some act of his

^q 6 G. 4, c. 16, s. 90; *Moon v. Raphael*, 1 Hodg. 289; 2 Scott. 489; 2 Bing. N. C. 310; 7 C. and P. 115.

^r *Atkins v. Seward*, 1 B. and B. 275; 3 Moore, 601.

^s R. H. 4 W. 4, (30); *Smith v. Bird*, 1 Hodg. 96; 3 Dowl. 641; *Tyns v. Billingsley*, 3 Dowl. 810.

^t R. H. 4 W. 4, (5, 6, 7); *Lawrence v. Stevens*, 1 Gale, 164; 3 Dowl. 777; *Doe v. Roe*, 4 Dowl. 222; *Jenkins v. Treloar*, *Ibid.* 690; *Tharnton v. Whitehead*, *Ibid.* 747; *Roy v. Bristow*, 5 Dowl. 452; *Cholmondeley v. Paine*, 5 Dowl. 638.

^v *Cooke v. Lucas*, 2 East, 398; *Barnard v. Higdon*, 3 B. and A. 213; *Spence v. Albert*, 1 H. and W. 7; 4 Nev. and M. 385; *Ashton v. Poynter*, 1 Gale, 57; 3 Dowl. 465; 3 Tyr. 322.

^w 3 & 4 W. 4, c. 42, s. 31.

^x 1 Vict. c. 45.

^y *Lysons v. Barrow*, 4 M. and Scott, 463; 10 Bing. 563; 2 Dowl. 807; *Farley v. Briant*, 3 Ad. and El. 839,

own misled the executor or administrator; and not where the real defence is by plea put upon the record,^a and the action is nevertheless proceeded with. The above provision also applies to an action of trespass, or on the case; and brought by an executor or administrator under 3 & 4 W. 4, c. 42,^a for a tort to the real estate in the life-time of the testator or intestate. In an action brought under the "Recovery of Tenements Act"^b by the tenant against the landlord, or his agent; the former, even though he succeeds at the trial; must, in order to prevent the bond being put in suit against him and his sureties, apply to the judge who tries the cause, for an indorsement to be made upon the *nisi prius* record, that the condition of the bond has been fulfilled.^c

[35.]. Where two or more defendants are sued in an action *ex delicto*, as in case, or trespass, and one or more of the greater number of them are acquitted, they will be entitled to costs; unless the judge who tries the cause certifies that there was a reasonable ground for making him or them defendants.^d But where, as under the Metropolitan Police Act,^e costs are unrestrictedly given to an acquitted co-defendant, the Judge cannot exercise this power;^f and the same rule applies^g as to the Birmingham Paving Act.^h

[36.]. Upon material issues being raised and sent down for trial, the judge ought not to discharge the jury as to any of them,ⁱ but he should direct a specific finding upon each; and he has power, at any time to direct an entry of the verdict to be made, according to the plain intention of the jury;^j and where a verdict is

^a *Godson v. Freeman*, 2 C. M. and R. 585; 1 Tyr. and G. 35; 4 Dowl. 543; 1 Gale 329; *Farley v. Bryant*, 1 H. and W. 776; *Southgate v. Crowley*, 1 Bing. 519, 1 Scott, 374.

^b s. 2.

^c 1 & 2 Vict. c. 74.

^d s. 4.

^e 3 & 4 W. 4, c. 42, s. 32; *Aaron v. Alexander*, 3 Campb. 35; *Furneaux v. Fotherby*, 4 Campb. 136.

^f 10 G. 4, c. 44, s. 41.

^g *Humphery v. Woodhouse*, 1 Scott, 395; 1 Bing. N. C. 506; 3 Dowl. 416; 1 Hodg. 64.

^h *Hall v. Smith*, 2 Bing. 267; 9 J. B. Moore, 226.

ⁱ 52 G. 3, c. 93.

^j *Rex v. Johnson*, 5 Ad. & El. 448; 1 Bligh. N. S. 552; *Vallance v. Adams*, 2 Dowl. 118.

^k *Ernest v. Brown*, 4 Bing. N. C. 162; 5 Scott. 491; *Alton v. Stockdale*, 16 Leg. Ob. 30.

taken, subject to a certificate or award, the latter must contain an express finding as to each issue.^k

[37.] Where the plaintiff in an action of tort obtains a verdict against any one of several co-defendants, he is entitled to retain it, and have judgment thereon against such defendant; and there are five cases in actions *ex contractu* where a similar rule prevails. 1. Where, after the remedy by action is barred by the Statute of Limitations, 21 Jac. 1, c. 16, s. 3, an acknowledgment in writing^l is given by a co-defendant, but not by the other or others.^m 2. If a co-defendant sets up in defence, and by special plea, a matter of subsequent and personal discharge for himself;ⁿ as a certificate in bankruptcy,^o or a discharge under the act for the relief of Insolvent Debtors.^p 3. Where after a plea in abatement^q in an action for the non-joinder of another co-contractor, there is a second action, and all the parties named in the plea in abatement are joined as defendants; if a verdict is found in favour of the plaintiff against those defendants only who were made defendants in the former action; the verdict will stand as to these latter parties; and those found by the verdict not to be liable, will be entitled to their costs.^r In such a case the plaintiff will, in the first instance, have to pay these costs; and he then has a remedy for the amount over against the defendants, as to whom a verdict passed in his favour; and they are taxed as part of his general costs in the cause. 4. Where after a judgment in outlawry, or of waiver against one joint-contractor and co-defendant, the plaintiff obtains judgment against another such:^s so also where a plaintiff sues several executors, administrators, heirs, or

^k *Gisburne v. Hart*, 5 M. & W. 50; 7 Dowl. 402.

^l 9 G. 4, c. 14, s. 1.

^m *McCulloch v. Dawes*, 9 D. & R. 40.

ⁿ *Noke v. Ingham*, 1 Wils. 89; *Boville v. Wood*, 2 M. & S. 23; *Moravia v. Hunter*, 2 M. & S. 444; 2 Rose, 264.

^o 6 G. 4, c. 16, s. 126; *Noke v. Ingham*, (in Error), 1 Wils. 89; *Harewood v. Matthews*, 2 Tidd's Pr. 1018; *Booth v. Middlecoat*, 6 Bing. 445; 4 M. & P. 182.

^p 1 & 2 Vict. c. 110.

^q 3 & 4 W. 4, c. 42, s. 10.

^r *Ibid.*

^s *Haigh v. Conway*, 15 East. 1; *Gent v. Abbott*, 2 J. B. Moore, 87.

devises,[†] and one of them denies administration, or the fact of having assets, or pleads *plene administravit* or *plene administravit præter*, and upon such pleading this defendant obtains a verdict or judgment. 5. So also where a co-defendant has suffered judgment to pass by default against himself, and a joint contract is proved.[‡]

[38.] In ejectment, if the nominal plaintiff is non-suited at the trial because the defendant does not appear there, and confess "lease, entry, and ouster;" this fact is certified by the Judge on the *nisi prius* record; and upon this entry the lessor of the plaintiff is entitled, under the consent rule, to his costs.[¶]

[39.] Upon a feigned issue tried by order of the Court or a Judge,[¶] as under the Interpleader Act;[‡] and whether it is made upon the application of the original defendant,[¶] or of the sheriff;[‡] the plaintiff succeeding therein is entitled to his costs,[¶] and which include any costs paid to the original defendant.^b

[40.] Though the defendant in an action is an infant, the plaintiff has, if he succeeds, his costs against the infant;^c and the rule is the same whether the defence was in form made by a guardian admitted as such at the instance of the defendant,^d or by a nominal guardian, as John Doe, and admitted as such at the prayer of the plaintiff;^e and where in ejectment the lessor of the plaintiff obtains a verdict, he has his costs against the defendant on the record; and including those incurred by

[†] 1 Saund. 207 a; *Hensloe's case*, 9 Rep. 36 b; *Brooks v. Stroud*, 7 Mod. 39; 1 Salk. 3; Yelv. 130; 2 Saund. 213.

[‡] *Morgan v. Edwards*, 6 Taunt. 398.

[¶] *Doe dem. Maaquis of Westminster v. Suffield*, 5 Dowl. 660; *Doe dem. Davis v. Roe*, 1 B. and C. 118.

[¶] *Herbert v. Williamson*, 1 Wils. 324; *Lord Fitzwilliam v. Maxwell*, 7 Taunt. 31.

^x 1 & 2 W. 4, c. 58.

^y s. 1.

^z s. 6; and 1 & 2 Vict. c. 45, s. 2.

^a *Bowen v. Bramidge*, 2 Dowl. 213; *Matthews v. Sims*, 5 Dowl. 234.

^b *Brown v. Bramidge*, 2 Dowl. 213.

^c *Defries v. Davis*, 1 Bing. N. C. 692; 1 Hodg. 103; 3 Dowl. 629; 1 Scott, 594.

^d Co. Litt. 135 b; *Marnell v. Pickmore*, 2 Esp. 473.

^e *Stone v. Atwell*, 2 Stra. 1076; *Gladman v. Bateman*, Barnes, 418.

him in the former proceeding against the casual ejector, Richard Roe ^f and the same rule holds where the landlord alone defends, and judgment is therefore signed against the casual ejector, but with a stay of execution.^g

[41.] Special bail sued upon their recognizance, and whether by an action of debt, or writ of *scire facias*,^h are liable for the costs therein, and also to the costs of the former proceedings against the principal; but not exceeding, with the sum named in the judge's order to hold to bail,ⁱ the amount of their recognizance.^j Bail in error are liable for the debt recovered upon the judgment in the Court below, and for the damages and costs awarded there, and also to interest thereon at 4 per cent.,^k up to the time of entering into the recognizance;^l this rule also holds in all cases where the proceedings in the Court of Error are determined on an affirmance,^m a discontinuance,ⁿ or a *non pros.*^o The two sureties in a recognizance given for the defendant, upon a removal of a cause before judgment from an inferior Court, where the cause of action does not amount to 20*l.*,^p are, upon judgment passing against the plaintiff (in error), liable to the debt and costs recovered therein; and also including those of and occasioned by such removal;^q and further, to interest at 4 per cent. on the judgment, and to the costs against themselves.^r But if the suit was re-

^f Tidd's Appendix, *tit.* Consent-Rule.

^g 11 G. 2, c. 19. s. 13.

^h 3 & 4 W. 4, c. 42, s. 34; *Brewster v. Meaks*, 2 Dowl. 612; *Davis v. Norton*, 1 Bing. 133; 7 Moore, 499.

ⁱ 1 & 2 Vict. c. 110, s. 3.

^j R. H. 2 W. 4, (21).

^k 1 & 2 Vict. c. 110, s. 17.

^l 2 Saund. 100, 101, 102.

^m 3 Jac. 1, c. 8.

ⁿ *Pym v. Warren*, 1 Barnes, 169.

^o *Dichenson v. Heatline*, 2 M. and S. 210.

^p 7 & 8 G. 4, c. 71, s. 6; 19 G. 3, c. 70, s. 6; *Attenborough v. Hardy*, 2 B. and C. 802; 4 D. & R. 362; *Brady v. Veeres*, 5 Dowl. 416; *Furnish v. Swann*, 10 B. and C. 458; *Lee v. Goodlad*, 4 D. and R. 350.

^q *Palmer v. Forsyth*, 4 B. and C. 401; 6 D. & R. 497; *Jameson v. Schanwar*, 1 Dowl. 175; *Dod v. Grant*, 1 H. & W. 711; *Nichols v. Tucker*, T. Jones, 188.

^r *Anon.*, 8 Mod. 336; *Wild v. Hardins*, *ib.* 282; 2 Saund. 61.

moved after judgment, by writ of error;^a the bail therein are liable to the debt, damages, and costs, recovered against their principal, to interest thereon at 4 per cent.,^b and further, to "all costs and damages"^c to be awarded for the same delaying of execution, and of the proceedings against themselves. The sureties in a recognizance given previously to a motion as to a new trial of a cause tried in the Common Pleas at Lancaster,^d and made in one of the three Superior Courts of Law at Westminster;^e are liable if the application is not prosecuted, or upon its being refused,^f to the debt, damages, and costs adjudged, or to be adjudged, in consequence of the verdict or nonsuit; and to all costs and damages to be awarded for the delaying of execution thereon; and further, to those of the proceedings against themselves.

[42.] The next material point for consideration, is where an executor or administrator^g is sued upon a contract for a wrong done^h by his testator or intestate; in such a case, if the defendant pleads a falseⁱ plea, or if he sets up in a plea a fact necessarily within his own knowledge; as a release to, or a payment by himself, and he fails thereon; the costs are out of his own estate; but in other instances they are payable out of the assets of the deceased, if there are any such; and if not, then out of the private estate of the defendant.^j Upon judgment of assets *quando acciderint*, the costs are *de bonis testatoris*:^k and the law is the same where the heir or devisee is sued upon a bond or covenant of the ancestor, and in express terms, binding his heirs;^l in this case, when the defendant pleads a false^m plea, or if he does not confess assets descended,ⁿ or if there is judgment

^a 19 G. 3, c. 70, s. 5.

^b 1 & 2 Vict. c. 110, s. 17.

^c *Bowton v. Nicholls*, Cro. Car. 401.

^d 4 & 5 W. 4, c. 62.

^e s. 26

^f s. 27.

^g *Lucy v. Watrond*, 3 Bing. N. C. 841; 5 Scott, 46; *Smith v. Day*, 2 M. and W. 684.

^h 3 & 4 W. 4, c. 42, s. 2.

ⁱ 1 Saund. 336; *Burroughs v. Stevens*, 5 Taunt. 554; 1 Marsh. 211.

^j *Howard v. Jemmet*, 3 Burr. 1368; 1 W. Bla. 400; *Marshall v. Wilder*, 9 B. and C. 655; 4 M. and R. 607.

^k *Anon.*, 1 Chitty, 629 n.

^l 11 G. 4, and 1 W. 4, c. 47.

^m *Ibid.*

ⁿ ss. 3, 6.

against him upon a demurrer,^g or by *nihil dicit*,^h or if he pleads *riens per descent*;ⁱ and there is a replication of "assets at the time of the writ sued out;"^j the jury who try the cause,^k are to inquire the "value of real and legal assets descended;"^l and the debt, damages, and costs are to stand as against the value so found, and even against the lands themselves; if they have not been, before the action was commenced, *bond fide* aliened;^m and if they have been so, then the debt, damages, and costs, are chargeable against the defendant personally.ⁿ

[43.] Under a provision in an act of parliament, awarding to a defendant double or treble damages, double or treble costs follow; and in such a case, and also when double or treble costs are expressly given, a right to them accrues upon the finding of the verdict for him, or upon a nonsuit being had.^o They are calculated only on the part of the pleadings to which the act refers.^p

[44.] When the trial has taken place before a judge; he can, before^q the end of the sittings, or assizes, certify for immediate execution, or for execution to go upon a day, specified in his certificate;^r and in ejectment, he can certify for a writ of possession, to issue immediately;^s in the latter case the costs are not taxed until the next term,^t but in the former they are, after the rule for judgment is out,^u taxed at once.^v If the cause

^g 11 G. 4, & 1 W. 4, c. 47, s. 7.

^h C. B. 1 F. 30.

ⁱ Pl. Com. 440 a.

^j Ast. Ent. 240; Bro. R. 195.

^k *Jeffry v. Barrow*, 10 Mod. 18.

^l 2 Rol. 70, l. 40; *Henningham's case*, Dyer, 344 b.

^m 11 G. 4, and 1 W. 4, c. 47.

ⁿ R. Jones, 87, 1 & 2 Vict. c. 110, ss. 11, 16, 19, 20.

^o *Tibbits v. Yorke*, 4 Ad. and Ell. 134; *Buckle v. Heues*, 4 B. and C. 154; 6 D. and R. 1; 1 Chit. 137, 141 (a.); *Penny v. Slade*, 5 Bing. N. C. 469; 7 Scott, 484; 7 Dowl. 440.

^p *Wilson v. River Dun Company*, 7 Dowl. 369; 5 M. & W. 89.

^q 1 W. 4, c. 7, s. 2; *Allsop v. Smith*, 7 C. and P. 708.

^r *Baddeley v. Oliver*, 1 C. and M. 219; 1 Dowl. 598; 3 Tyr. 145.

^s 11 G. 4, and 1 W. 4, c. 70, s. 38; 1 W. 4, c. 7, s. 5.

^t 2. T. R. 780, note; *Doe v. Copeland*; 2. T. R. 779; *Doe v. Roe*, 1 B. and C. 118.

^u *The Governors of the Poor of Exeter v. Livell*, 7 Dowl. 624;

^v R. H. 2 W. 4, (67).

(being in the Queen's Bench) comes over from the last sittings in the term and with judgment of the term, provided the judge thinks it fit;^a the costs are taxed at once, and without any formal certificate being made by the judge; and in such a case, a new trial cannot be moved for, or writ of error brought.^v When in a cause a writ of inquiry of damages is heard before the sheriff; and either in ordinary cases,^w or upon breaches suggested under 8 & 9 W. 3, c. 11;^x or there is a writ of trial under 3 & 4 W. 4, c. 42;^y in these cases, unless the officer who presides at the inquiry or trial certifies under his hand on the back of the writ for a stay of proceedings,^z or unless such a stay is ordered by a judge, or unless such officer retains the writ, for the purpose of proceedings being in the meantime stayed; judgment is signed,^b and costs may be taxed forthwith.^c But if proceedings are not stayed by either of the above means, the party, against whom the verdict has passed, or nonsuit has been had, ought immediately to apply to a judge at chambers, to make an order for a stay of the proceedings until the fifth day of the next term, and state the grounds of his application.^d If the application is refused, or only granted upon terms, with which the applicant either cannot, or will not comply, he ought immediately to serve a written notice, directed to the opposite party, and to his attorney, upon the latter, of his intention to apply to the Court at the beginning of the next term, to grant the subject-matter of his application to the judge, and requiring them not to take any proceedings in the meantime. If, however, proceedings are taken in the meanwhile, and though they are so under a judge's certificate^e for immediate or speedy execution; such a course will not prevent the application being made to the Court in the next term.^f

^a *Bland v. Warren*; 2. Nev. and P. 97; 6. Dowl. 21.

^v *The King v. Carlisle*, 2 B. & Ad. 971.

^w 1 W. 4, c. 7, s. 1.

^x s. 8, & 3 & 4 W. 4, c. 42, s. 16.

^y ss. 17, 18.

^z *Johnson v. Beale*, 5 M. and W. 276; 7 Dowl. 487.

^b *Godson v. Lloyd*, 1 Gale, 244.

^c *Nicholls v. Chambers*, 2 Dowl. 639; R. H. 2 W. 4, (67.)

^d *Baddeley v. Oliver*, 1 C. and M. 219; 1 Dowl. 598; 3 Tyr.

145.

^e 1 W. 4, c. 7, s. 4; *Morton v. Burn*, 5 Dowl. 421.

^f 1 W. 4, c. 7, s. 4; 3 & 4 W. 4, c. 42, s. 19.

[45.] The costs upon a writ of inquiry of damages are taxed upon the same principle as upon a trial before the sheriff;^s but if the plaintiff purposes to attend the inquiry by counsel, he must within a reasonable time before it takes place, give a written notice of his intention to the defendant's attorney; otherwise the expences of so attending will not be allowed in taxing costs.^h

[46.] The motion for a new trial, or any proceeding of a like kind,ⁱ may, in all such cases, and also in others,^k be made to the court in which the action is pending within the four first sitting days of the next term: and may even be so without any notice of the motion being given to the other side. If the motion is granted, the taxation of costs is always stayed until the rule is disposed of: where from the press of business, it is inserted in the "list of reserved motions for new trials," and notice thereof is served on the other side, there is a like stay of proceedings.^l The costs of the client in opposing successfully a motion for a new trial, are "costs in the cause."^m

[47.] Where a new trial is granted for an entireⁿ misdirection^o of the judge, or because the verdict is certified by him to be,^p or it appears to the Court to be "absolutely perverse" to the real question for and submitted to the jury;^q the rule is granted "without costs;" and in such cases^r the amount found by the jury is not material;

^s *Hooppell v. Leigh*, 5 Dowl. 40.

^h Tidd's Appendix, Chap. 23, s. 62; See form, *post*.

ⁱ *Godson v. Lloyd*, 4 Dowl. 157; 1 Gale, 244; *King v. Erie*, 5 Dowl. 595; *Porter v. Cooper*, 1 Gale, 149.

^j *Pyke v. Glendenning*, 2 Dowl. 611.

^k R. H. 2 W. 4, (65); *Kirkham v. Martre*, 2 B. & A. 613; *Mason v. Clarke*, 1 Dowl. 288; 1 C. & J. 411.

^l *Lester v. Lazarus*, 4 Dowl. 444.

^m *Eyre v. Thorpe*, 6 Dowl. 768.

ⁿ *Lord v. Wardle*, 3 Bing. N. C. 680; 4 Scott. 402.

^o *Haine v. Davey*, 4 Ad. & Ell. 892; 2 H. & W. 30.

^p *Farrant v. Olmhus*, 3 B. & A. 692; *Gregory v. Tuffe*, 1 C. M. & R. 300; 2 Dowl. 711; 4 Tyr. 820; *Faulconberg v. Pierce*, Amb. 210.

^q *Howorth v. Samuel*, 1 Chit. 633. n; *Shillitoe v. Claridge*, 2 Chit. 426; *Edwardes v. Dignam*, 2 Dowl. 642; *Freeman v. Price*, 1 Y. & J. 402.

^r *Lyddon v. Coombes*, 5 Dowl. 560; 7 Ad. and El. 897. (n.)

and this, although upon a trial at *nisi prius*, it was less than 20*l.*;* or upon a writ of trial it was under 5*l.*;^t and the costs of the former trial, and of the application, do not form any part of the "costs of the cause,"^u and are not recoverable in any subsequent event by either side.^v Neither are they recoverable, though the defendant afterwards withdraws his pleas,^w and suffers judgment to pass by default against him; and there are not any costs allowed as to the first trial, where the cause went off upon a reference, and which subsequently turned out to be ineffectual;^x or where the jury are discharged by the judge from giving any verdict at all.^y But except for misdirection, or where the verdict is perverse, a new trial cannot be had after a trial, where the debt or damages were less than 20*l.* or upon a writ of trial, where they are under 5*l.* The grounds usually assigned and allowed, are that the verdict given was against "the weight of the evidence," provided the judge certifies his disapprobation of it; or that on a writ of trial it appears to the Court to be palpably so; or that there was a surprise upon the party against whom it passed, by the production of evidence which he could not reasonably anticipate;^z or that it was taken in his absence, and he has "merits;" and which are sworn to;^a or that there was not sufficient time for him to procure his necessary evidence.^b In the instance, as

* ——— *v. Phillips*, 1 C. & M. 26; *Freeman v. Price*, 1 Y. & J. 402; *Watson v. Reeve and others*, 7 Dowl. 127; 5 Bing. (N. C.) 112; *Sowell v. Champion*, 2 Nev. & P. 627; 6 Ad. & Ell. 407.

^t *Packham v. Newman*, 1 C. M. & R. 585; 5 Tyr. 215; *Williams v. Evans*, 2 M. & W. 220; *Lyddons v. Combes*, 5 Dowl. 560; W. W. & H. 207.

^u R. H. 2 W. 4. (64.) *Rigby v. Okell*, 7 B. & C. 57; *Peacock v. Harris*, 1 Nev. & P. 240; 5 Ad. & Ell. 449; *Wilkinson v. Malin*, 2 Dowl. 65; *Newbury v. Colvin*, *Id.* 415.

^v *Shulbred v. Nutt*, Hull. 395; *Shoolbred v. Nutt*, 2 Tidd's Pr. 923; *Worcestershire Comp. v. Trent Company*, 2 Marsh, 475; *Joliffe v. Munday*, 4 Mee. & W. 502; 7 Dowl. 225.

^w *Peacock v. Harris*, 5 Ad. & Ell. 449; 1 Nev. & P. 240.

^x *Thomas v. Lewis*, 5 Dowl. 275; *Wood v. Duncan*, 7 Dowl. 344; 5 Mee. & W. 87.

^y *Seely v. Powers*, 3 Dowl. 372.

^z *Sutton v. Mitchell*, 1 T. R. 20.

^a *Sprigge v. Rutherford*, 2 Dowl. 429; *Bland v. Warren*, 2 Nev. & P. 97; 6 Dowl. 21.

^b *Atkins v. Owen*, 4 Ad. & Ell. 819; 4 Nev. & M. 123

against evidence and subsequent ones, the rule for a new trial is always "on payment of costs."^c This term^d includes the costs of opposing the application,^e and also those of the former trial, remanet fees incurred thereby,^f and the preparation of,^g and a proportion of the fees upon the briefs;^h but it does not include any costs upon summonses to obtain admissions, nor expences of briefs, as applicable to the second trial:ⁱ when the rule to show cause is granted, and in a case where the cause was tried before the judge of another Court, he furnishes to the Court where the action is, his notes of the trial;^j and the same course is adopted upon a writ of trial, heard before a judge of a Court of record;^k in such cases the notes are bespoke, and the judge's clerk's fees paid at the time of making the motion. The notes of a short-hand writer are not allowed for in costs,^l or even allowed to be read.^m Where a writ of trial is heard before an undersheriff, his notes are obtained and verified by affidavit, and before the motion is made;ⁿ and if he delays sending them, the Court will compel him, and also make him pay the costs of the application.^o The rule absolute for a new trial, belongs to the party who applied for it: where he omits^p for an unreasonable time to draw it up,^q and if costs

^c *Doe dem. Smith v. Pike*, 1 Nev. & M. 385

^d *Robinson v. Day*, 5 B. & Ad. 814.

^e *Weak dem. Burge v. Calloway*, 7 Price, 677.

^f *Robinson v. Day*, 2 Nev. & M. 670; 5 B. & Ad. 814.

^g *Lord v. Wardle*, 5 Scott, 398; 6 Dowl. 174.

^h *Wilkinson v. Makin*, 2 Dowl. 65; *Rigby v. Okell*, 7 B. and C. 57; *Spitta v. Woodman*, 3 Taunt, 406.

ⁱ *Lord v. Wardle*, 5 Scott, 398; 6 Dowl. 174.

^j *Major v. Oxenham*, 5 Taunt, 340; *Rex v. Grant*, 3 Nev. and M. 106; 5 B. and Ad. 1081; *Ex parte Harwood*, 1 Mont. 8; *Morris v. Davies*, 3 Russ. 318.

^k *Hall v. Middleton*, 4 N. & M. 368; 1 H. & W. 7; *Mansfield v. Breary*, 1 Ad. & El. 347; *Burney v. Mawson*, *Id.* 348 n.

^l *Crease v. Barrett*, 2 C. M. & R. 738; 1 Tyr. & G. 112.

^m *Serjeant v. Chafy*, 5 Ad. & Ell. 354.

ⁿ *Johnson v. Wells*, 2 Dowl. 352; *Granger v. Shopper*, *Ib.* 644.

^o *Metcalf v. Parry*, 3 Dowl. 93; *Thomas v. Edwards*, 2 Dowl. 664.

^p *Clare v. Fiestal*, 2 Dowl. 617; *Nichols v. Bozon*, 13 East, 185.

^q *Bland v. Warren*, 2 Nev. & P. 97; 6 Dowl. 21.

have been ordered thereon and payable by him : the party who obtained the verdict may proceed in the cause, and tax the general costs. In such a case, the payment of the costs by the applicant constitutes a condition precedent before he can take any ulterior proceedings ;^r but if the party by whom they are payable tries the cause without paying them, the opposite party has not any means left to recover them.^s Where the rule absolute for a new trial is not drawn up "on payment of costs," and the applicant gives notice of his abandoning it,^t the party who obtained the verdict will be entitled to his costs upon the trial, but not of those as to the motion for the new trial, even though he causes the rule absolute to be drawn up.^u The costs of obtaining the admission of documents, and of notices to produce such at the former trial, remain as "costs in the cause."^v But where the costs are ordered to "abide the event," this means the "ultimate event ;" and the costs upon the first trial are only allowed to the party who succeeded thereon ; and not even to him, unless he also succeeds upon the second trial.^w If the defendant wholly succeeds on the first trial, and a new trial is granted as to part only, and he succeeds on that also ; he has his entire costs on the issues found for him.^x

[48.] If upon moving for such a rule the judges^y of the Court are equally divided in opinion, the rule cannot be granted ; and the verdict or nonsuit complained of stands good. But if when the rule comes on to be argued they are so divided, all proceedings in the action remain stayed.^b Where a *venire de nova*, whether as to a

^r *Nichols v. Boson*, 13 East, 185.

^s *Doe d. Daire, v. Haddon*, Hullock on Costs, 401 ; S. C. nom. *Doe d. Davie v. Haddon*, 2 Tidd's Practice, 946 ; *Morgan v. Birnie*, 9 Bing. 672 ; *Doe v. Carter*, 8 Bing. 330.

^t *De Ruteen v. Lloyd*, 5 Ad. & Ell. 456, 463 ; 2 Nev. & P. 213.

^u *Ibid.*

^v *Lord v. Wardle*, 6 Dowl. 174 ; 5 Scott, 398.

^w *Hudson v. Majoribanks*, 1 Bing. 393 ; 8 Moore, 440 ; *Sherlock v. Bamed*, 8 Bing. 21 ; 1 M. & Scott, 58 ; *Pooley v. Millard*, 1 Tyr. 260 ; *Mule v. Goddard*, 5 B. & A. 766.

^x *Bower v. Hill*, 2 Scott, 540 ; 1 Hodges, 334.

^y 11 G. 4, and 1 W. 4, c. 70, s. 1 ; *Foster v. Steele*, 3 Bing. (N. C.) 892 ; 5 Scott, 25 ; *Same v. Allenby*, 3 Bing. 896 ; 4 Scott, 535 ; 5 Dowl. 619.

^b *Procter's Case*, 12 Rep. 118 ; 6 Mod. 204 ; 1 Saik. 15.

particular count, or breach only,^c or after a special verdict,^d is ordered by the Court; the party who succeeded upon the former trial is, even though he also succeeds upon the latter, only entitled to the costs of the last trial,^e and there are not any costs as to the application:^f The same rule holds where an action of tort, or for unliquidated damages,^g was tried upon a writ of trial, even though by consent.^h Where the rule for the new trial is silent as to the costs;ⁱ where judgment is arrested,^j or a judgment is vacated and further judgment arrested,^k each party pays his own costs.^l Upon a repleader being awarded, neither party is entitled to any costs of, or subsequent to the defective pleadings;^m and upon a judgment *non obstante veredicto*,ⁿ the plaintiff is not allowed any costs of the proceedings subsequent to the declaration, or of the application; the same rule holds where such a judgment is obtained by an avowant in replevin:^p and the costs allowed to him, are as upon a judgment by default as for want of a plea, and also of a writ of inquiry, if necessary.^q [49.] If at a trial at *nisi prius*,^r or upon a writ of trial

^c *Leach v. Thomas*, 2 M. and W. 427; 5 Dowl. 612; *Dadd v. Crease*, 2 C. and M. 223; 4 Tyr. 74; 2 Dowl. 269.

^d *Birtwhistle v. Vardill*, 9 Bligh, 32.

^e *Bird v. Appleton*, 1 East, 111; *Edwards v. Brown*, 1 C. and J. 354; 1 Dowl. 282; 1 Tyr. 281.

^f *Seely v. Powers*, 3 Dowl. 372; 1 H. and W. 118; *Waite v. Spurgin*, 4 Dowl. 375.

^g 3 & 4 W. 4, c. 42, s. 17.

^h *Smith v. Brown*, 2 M. and W. 851; 5 Dowl. 736.

ⁱ *R. G. H.*, 2 W. 4, s. 64; *Craven v. Sanderson*, 7 Ad. & El. 897. (n.)

^j *Cameron v. Reynolds*, Cowp. 407; *Smith v. Brown*, 5 Dowl. 736.

^k 1 W. 4, c. 7, s. 4; 3 & 4 W. 4, c. 42, s. 19; *Hayter v. Moat*, 2 M. and W. 56; 5 Dowl. 329.

^l *Cameron v. Reynolds*, 1 Cowp. 407.

^m *Plummer v. Lee*, 5 Dowl. 760; 2 M. and W. 495; *Symmers v. Regem*, 1 Cowp. 510. ⁿ *R. H.* 2 W. 4, (65.)

^o *Goodburne v. Bowman*, 2 Dowl. 206; 9 Bing. 666; 2 M. and Scott, 206; *Kirk v. Nowill*, 1 T. R. 266; *Da Costa v. Clark*, 2 B. and P. 376; *Gillingham v. Waskett*, 13 Price, 484; *M'Clell.* 198. ^p *Da Costa v. Clarke*, 2 B. and P. 376.

^q *Shepherd v. Halls*, 2 Dowl. 453.

^r 3 & 4 W. 4, c. 42, s. 24.

being heard,^k a variance arises between the pleadings, and the evidence;^l the Judge has power to direct the jury to find the facts specially. This finding is stated upon the record, or writ; and then the Court in which the action is, may, notwithstanding this finding, and if they consider the variance to be immaterial to the merits of the case, and the mis-statement not to have prejudiced the other party; give judgment on the whole proceedings "according to the very right and justice of the case."^m In such a case, the party, for whom such a judgment is ordered to be entered, has the general costs of the cause; each party taxes his own costs upon the motion; and the party for whom the other issues are found has his costs thereon.ⁿ

[50.] Where from a delay by act of the Court,^o or from a difficulty in taxing,^p there is a judgment ordered to be entered up *nunc pro tunc*; the costs thereon are added to the other general costs. If judgment has after a trial been signed in vacation, and even if execution has been issued thereon; the application to the Court must be to vacate the judgment and set aside the execution, and without costs.^q But the Court will not, pending such a rule, order the costs which have been levied to be paid into Court.^r The proper remedy is by the former, or an independent subsequent rule, to call on the party to restore them;^s and if any of the above rules are discharged, the costs thereon usually follow.

[51.] Supposing none of these rules to have been obtained, nor any application to have been made under any act relating to any Court of Requests for the entry

^k 3 & 4 W. 4, c. 42, s. 18.

^l s. 19; *Frankam v. Earl of Falmouth*, 4 Nev. and M. 330; 2 Ad. and El. 452; 1 H. and W. 1.

^m s. 24.

ⁿ *Guest v. Elwes*, 2 Nev. and P. 230; 2 H. and W. 34.

^o *Lansman v. Audley*, 2 M. and W. 535; *Vaughan v. Wilson*, 4 Bing. (N. C.) 116; 6 Dowl. 210; 5 Scott, 404.

^p *Blewitt v. Tregoning*, 4 Ad. and Ell. 1002; *Green v. Cobden*, 4 Scott, 486.

^q *Morton v. Burn*, 5 Dowl. 421; *King v. Erle*, *Id.* 595; *Heale v. Earl*, 2 M. and W. 383.

^r *Morton v. Burn*, *supra*.

^s 1 W. 4, c. 7, s. 4.

of a suggestion as to costs; the plaintiff is, on the expiration of four sitting days of the Court, after the return of the jury process;^u or at the return of the writ of trial,^v or writ of inquiry,^w entitled to tax his costs. This right is not stayed or controuled by the common injunction from a Court of Equity for "staying execution."^x

[52] As a general rule, a verdict for the plaintiff for any debt or damages, however small, carries with it full costs; and a verdict for him on any part of the record entitles him to the *postea*,^y or writ of trial. These are upon a trial, or writ of trial, recorded by the jury at 40s. : on a writ of inquiry they are taken at 20s. In technical language these are termed the "common" costs,^z and are always inserted as such in the *Allocatur*. The "full costs" are of addition; they are technically termed the "costs of increase;" and are taxed for the plaintiff, not as an integral part of the suit, but in consequence of the damages recovered; and therefore, and in furtherance of the provision contained in the Statute of Gloucester, form the subject of a distinct and separate adjudication.^a In the immediate period after that act was passed, they consisted only of the "moderate fees of counsel and attorneys that attended the cause."^b But in more recent times they included, and at present include all the costs allowed by the practice; and whatever may be the nature of the process,^c the pleadings,^d the issues,^e and

^u Hil. 2 W. 4, (67); *Blanchenay v. Vanderberg*, 3 J. B. Moore, 643; *Jackson v. Hall*, 2 Moore, 478.

^v 3 & 4 W. 4, c. 42, s. 18; *Nicolls v. Chambers*, 1 C. M. and R. 385; 4 Tyr. 836; 2 Dowl. 693.

^w 1 W. 4, c. 7, s. 1.

^x *Morrice v. Hankey*, 3 P. Wms. 146; *Earnshaw v. Thornhill*, 18 Ves. jun. 488; *Noble v. Garland*, 19 Ves. jun. 377.

^y *Smith v. Edwards*, 4 Dowl. 621; 1 Har. and W. 497.

^z *Taylor v. Wilkinson*, 5 Nev. and M. 189; 1 H. and W. 451.

^a 6 Edw. 1, c. 1; *Taylor v. Wilkinson*, 5 Nev. and M. 189; 1 Har. and W. 451.

^b Bac. Ab. i, 511.

^c *Pilford's case*, 10 Rep. 116.

^d 2 Inst. 288.

^e *Keilw.* 48; 2 Leon. 177; 1 Brownl. 43; *Fanshaw v. Morrison*, 1 Salk. 208; 6 Mod. 157; *Crufee & Berry*, 1 Rol. Ab. 516.

the mode of trial.^f Where in an action on an attorney's or solicitor's bill of costs there is a verdict for him, but subject to taxation within a specified time, as the four first days in the next term; it is the duty of the defendant to avail himself of this power; and if he does not do so within the prescribed period, the plaintiff is entitled to tax his "general costs in the action."^g If the terms of a *cognovit actionem* stipulate that judgment shall not be entered thereon, unless default is made in payment of the debt, with interest and costs, and at a time therein specified; it is not until such default has been made, and the defendant has been served with a bill of costs and notice of taxing them, that any judgment can be entered up, or execution issue;^h but the plaintiff is allowed to sign judgment, although he has not taxed costs.ⁱ

[53.] The Pleading Rules, H. 4 W. 4,^j and which are the material regulations as to the costs on several issues, are declared to be part and parcel of the law of the land.^k The right to some debt or damages, however trifling,^l commonly gives to the plaintiff "the general costs of the cause;" and it should be taken as a general rule, that he obtains full costs, where he has a judgment by default,^m on confession,ⁿ or upon demurrer,^o or on a special case,^p or on an issue by the record,^q or an award of execution in a writ of *scire facias*.^r The same

^f *Gavell v. Scudamore*, 2 Lev. 124; *Cook v. Beale*, 3 Salk. 115; 1 Ld. Raym. 176.

^g *Tucker v. Neck*, 4 Bing. (N. C.) 113; 6 Dowl. 231.

^h *Booth v. Parker*, 3 M. and W. 54; 6 Dowl. 87.

ⁱ *Barrett v. Partington*, 5 Bing. (N. C.) 487; 7 Dowl. 447.

^j s. 5. ^k *Roffey v. Smith*, 6 C. and P. 662.

^l *Gould v. Drake*, 3 M. and W. 543; *nom. Booth v. Drake*, 6 Dowl. 564; *Larnder v. Dick*, 2 Dowl. 333.

^m *Strutton v. Whitwell*, 1 M. and R. 562.

ⁿ *Chambers v. Shaw*, 1 Com. 206; *Anonymous*, Holt, 400; *Adams v. Ter-tenants of Savage*, 1 Salk. 40.

^o 3 & 4 W. 4, c. 42, s. 34; 1 And. 117, pl. 153.

^p *Id.* s. 25; *Garland v. Jekyll*, 3 Bing. 330; 9 Moore, 620; *Robertson v. Liddell*, 10 East, 416; 1 Chit. 19 a.; *Sanderson v. Piper*, 5 Bing. N. C. 561; 7 Scott, 418; 7 Dowl. 632.

^q *Hopkins v. Knapp*, Barnes, 264; *Dawson v. Lee*, Cro. Car. 566.

^r 3 & 4 W. 4, c. 42, s. 34; 1 Saund. 58 f; *Henriques v. Dutch Company*, 2 Ld. Raym. 1532; *Brewster v. Meeks*, 2 Dowl. 612.

rule applies as to pleadings, and an issue in abatement; and this, whether on demurrer^a or in fact:^t so also, where he has judgment on an issue in law or in fact, found for him on a pleading *quasi puis darrein continuance*, under R. H. 4 W. 4;^u and which comprises the costs both of the former and of the new pleadings; on a revival of an action by a writ of journey's accounts;^v or where there is a removal of a cause concerning the revenue into the Exchequer of Pleas;^w or before judgment into a superior from an inferior Court, by a writ of *certiorari*;^x or from the County Court, by writ of *recordari facias loquelam*;^y or if into the Exchequer of Pleas, by *certiorari loquelam*;^z and so also where there are proceedings in outlawry or waiver.^a In each of these instances the previous proceedings, although they do not form a constituent part of the main action,^b yet are connected with it;^c and upon that principle the costs as to each proceeding are taxed in the aggregate costs of the action. A new assignment is sometimes used in trespass, and occasionally in actions upon the case; and when there is such a pleading the plaintiff is, if he obtains any damages thereon, entitled to costs both as to the former and this additional proceeding;^d for it is deemed in law as if a new count, and the costs upon it are the same as if it had been originally a part of the declaration. Thus, where the defendant pleads a right of common, and there is a new assignment as to a surcharge;^e the costs thereon have not any reference to the declaration or the plea to it. But where the general issue or other

^a 3 & 4 W. 4, c. 42, s. 34.

^t *Aplin v. Constable*, Ca. Prac. C. P. 35.

^u *Lytleton v. Cross*, 4 B. and C. 117; 6 D. & R. 81.

^v *Kinsey v. Haywood*, 1 Ld. Raym. 432; 12 Mod. 576.

^w *Cawthorne v. Campbell*, 1 Anstr. 205; *Benningfield v. Stratford*, 8 Price, 584.

^x *K. B. Mich. 1654*, (22); C. P. (25).

^y *Bevan v. Prothesch*, 2 Burr. 1151; *Clark v. Mayor of Berwick*, 4 B. and C. 649; *Edwards v. Bowen*, 5 B. and C. 206.

^z *Dax. Prac.* 109.

^a R. M. 17 Car. 2.

^b *Hetherington v. Reynolds*, 1 Salk. 8.

^c *Thorpe v. Mattingley*, 2 Y. and C. 421.

^d *Longden v. Bourn*, 1 B. and C. 278; *House v. The Commissioners of the Thames*, 3 B. and C. 117; 6 Moore, 324; *Gundry v. Sturt*, 1 T. R. 636; 4 Taunt. 98.

^e *Bowen v. Jenkins*, 2 Nev. and P. 84.

plea remains to the declaration, the plaintiff succeeding thereon is entitled to the general costs of the action.^f These new Pleading Rules constitute in effect a separate issue, and give the costs of trials upon each distinct part of a declaration, or even count.^h Where there is not any plea left as to the declaration, and there is a judgment by default as to the new assignment; a writ of inquiry must be executed thereon:ⁱ and the rule is the same, as to a plea, where it is found entire for the defendant.^j Where by a Judge's order^k the defendant has been held to special bail; the bail are only liable to so much of the costs of the proceedings as have an immediate^l reference to the causes of action, as stated in the affidavit to hold to bail;^m and the like rule prevails where the declaration has been amended and counts not applicable to the bail are added.ⁿ In such an event, the plaintiff's attorney, in making out the "general costs of the cause," should separate and class the two different sets of costs, and have each taxed distinct from each other.

[54.] Where under 1 & 2 Vict. c. 110,^o a final judgment, rule, or order obtained or made in an Inferior Court, is removed for the purpose of proceeding thereon into one of the Superior Courts of Law at West-

^f *House v. Thames Navigation*, 6 J. B. Moore, 324; 3 B. and B. 117; *Broadbent v. Shaw*, 2 B. and Ad. 940; 1 Dowl. 336; *Vickers v. Gallimore*, 5 Bing. 196; 2 M. and P. 359; *Forester v. Dale*, 1 Dowl. 412.

^g *Guest v. Elwes*, 2 Nev. and P. 230; 5 Ad. & El. 228; *Eyre v. Thorpe*, 6 Dowl. 768.

^h *Cox v. Thomason*, 1 Dowl. 572; 2 C. and J. 498; *Knight v. Brown*, *Id.* 730; *Griffiths v. Davis*, 8 T. R. 466.

ⁱ *Ruddock v. Smith*, 1 Dowl. 467.

^j *Cousins v. Paddon*, 2 C. M. and R. 547; 4 Dowl. 488; 1 Gale, 305; 5 Tyr. 535; *Green v. Marsh*, 16 Leg. Ob. 483; *Bennion v. Davison*, 3 M. and W. 179; *Knight v. Woore*, 5 Dowl. 201; *Earl Spencer v. Swannell*, 3 M. and W. 154; 6 Dowl. 326; 4 Anne, c. 16, s. 5; 1 Saund. 347b; *Serjeant v. Chafy*, 5 Ad. and Ell. 354; *Jones v. Richards*, *Id.* 413.

^k 1 & 2 Vict. c. 110, s. 3.

^l *Taylor v. Wilkinson*, 3 Ad. and Ell. 784; 1 Nev. and P. 629; *Taylor v. Wilkinson*, 6 Ad. and Ell. 533.

^m *Luce v. Irwin*, 6 Dowl. 92.

ⁿ *Taylor v. Wilkinson*, 5 N. and M. 189; 1 H. and W. 451.

^o s. 22.

minster; all the reasonable costs and charges attending the application and the removal are made recoverable, as if part of such judgment, rule, or order. But this provision only applies where the Inferior Court is of Record, and the Judge there is a barrister of seven years standing at the bar; as is the case in the Palace Court, the Sheriffs' Court of London, the Lord Mayor's Court, the Court of Passage at Liverpool, and the Court of *Venire* at Hull.

[55.] Taxation of costs.—The preliminary step on effecting a final judgment takes place before one of the Masters^p of the Court, and who are termed the "Taxing Officers." Their offices are opened in term time, from 11 until 5 o'clock (P. M.), and in vacation from 11 to 3, except between August 10th, and October 24th, when the hours are between 11 and 2 only.^q But they are not compelled to attend between the last day of August, and the 21st day of October,^r although in practice one of them usually attends during the latter period to tax short bills of costs. The hours of their attendance may be learnt at their respective offices. Notice of taxing costs, is not required to be served upon the defendant, when the amount is mentioned in a warrant of attorney to confess judgment,^s or a *cognovit actionem*;^t nor in other cases, unless the defendant for himself^u entered an appearance^v in person, or it was entered for him by his guardian, or by his attorney; a subsequent appearance upon a *cognovit actionem* does not entitle the defendant to notice,^w and the costs may be taxed *ex parte*.^x Where notice is required, a notice upon one day for the next, will suffice; and though the taxation is postponed, no other notice of taxing is

^p 3 & 4 W. 4, c. 42, s. 36; 1 Vict. c. 30, ss. 1, 3, 5; *Protheroe v. Thomas*, 3 Moore, 3; 8 Taunt. 670.

^q R. T. 7 W. 4.

^r 1 W. 4, c. 76, s. 6.

^s *Griffiths v. Liversedge*, 2 Dowl. 143.

^t *Clarke v. Jones*, 3 Dowl. 277; *Clothier v. Est*, 3 M. & Scott, 216.

^u *Burch v. Pointer*, 3 M. and W. 310; 6 Dowl. 387; *Pope v. Mann*, 2 M. and W. 881.

^v R. H. 4 W. 4, (17); *Bolton v. Manning*, 5 Dowl. 769.

^w *Clarke v. Jones*, 3 Dowl. 277.

^x *Sadler v. Robins*, 1 Campb. 253; *Praed v. Hammond*, 2 Y. and J. 32.

requisite.^y Reasonable costs of serving a notice of taxation are allowed;^z any irregularity as to the want of notice^a must be complained of promptly, or it will be waived.^b Where the cause is in the Exchequer, and it is a country cause, if the taxation^c is to be upon a *postea* or inquisition, there must be two days' previous notice of taxing served upon the opposite side; and in taxing^d upon rules, orders, town *postea*s, and inquisitions; a copy of the bill of costs, and of the affidavit of increase, must be served one day before taxation: this rule, where it applies, is imperative;^e but it does not extend to a rule for judgment upon a demurrer;^f or cases where the defendant did not enter an appearance.^g Where the defendant is not entitled to a notice of taxing, he may obtain from the Masters of the Court, a rule to be present at taxing; the service of a copy, ensures him a reasonable notice of taxation;^h and if taken out before the plaintiff is entitled to final judgment, there must be twenty-four hours' notice.

[56.] In preparing the bill of costs, and the affidavit of increase, there are certain important rules to be observed in practice; *viz.* a plaintiff suing *in forma pauperis*, does not, if he recovers less than 5*l.*, pay any Court fees at the trial, or any fees to any officer of the Court;ⁱ but his fees for counsel and attorney are allowed him.^j If the attorney for the plaintiff is not admitted in the

^y R. T. 1 W. 4, (12); *Perry v. Turner*, 1 Dowl. 300; 2 C. and J. 89; 2 Tyr. 128; 1 Price, (P. C.) 161; *Edmunds v. Cates*, 4 M. and W. 66; 6 Dowl. 667.

^z *Thorp v. Wordy*, 2 C. and J. 488; 1 Dowl. 576; *Thorpe v. Worthy*, 2 Tyr. 489.

^a *Watson v. Murrel*, 1 C. and P. 307.

^b *Rutledge v. Giles*, 2 Tyr. 169.

^c R. M. 1 W. 4, (10); 1 C. & J. 279; 1 Tyr. 161.

^d *Wilson v. Parkins*, 5 Dowl. 461; 2 M. and W. 315.

^e Reg. Gen. M. 1 W. 4, Exch. 1; Price's P. C. viii; 1 Tyr. 161; 1 C. and J. 279; *Wilson v. Parkins*, 5 Dowl. 461.

^f *Taylor v. Murray*, 3 M. and W. 141; 6 Dowl. 80.

^g *Burch v. Pointer*, 3 Mee. and W. 310; 6 Dowl. 387; Reg. Gen. Hil. 4 W. 4, (s. 17).

^h 1 Sellon Pr. 530; Impey, 386; *Hukfield v. Kendal*, 1 Chit. 693; Tidd's Pr. 8th ed. 1027; R. G. Trin. 1 W. 4, s. 12.

ⁱ *James v. Harris*, 7 C. and P. 257.

^j *Gougenheim v. Lane*, 4 Dowl. 482; 1 Gale, 343; 1 M. and Wels. 136.

Court, and upon its rolls,^k or has not the consent in writing^l of an attorney thereof, to practise there in his name; or if the plaintiff has not taken out his certificate,^m the costs "out of pocket" and sums actually advanced on account by the client, are only allowed in taxation.ⁿ The "costs of issues" include the "trial" of them;^o in replevin^p both parties are considered as actors. And where insurance causes are consolidated, the costs of the plaintiff are to be apportioned equally.^q There is, however, no objection to the London attorney's name being indorsed on the writ, and inserted in the record and proceedings; provided he has conducted all the business in Court, and has corresponded with the country attorney.^r Fees to counsel and their clerks cannot be allowed; except where if a counsel having precedence within the bar, the initials of his name; and if another counsel, his full name, are subscribed to each separate fee, as indorsed upon the brief.^s The affidavit of increase details all the costs incurred on behalf of the plaintiff in the course of the action, and which do not appear upon the proceedings; such as expences of witnesses, fees to counsel and their clerks, attendances and Court fees. The affidavit must further state that the witnesses were material and necessary;^t in which case, though not called as witnesses, they are in general allowed for,^u that they attended the trial; and if they attended also in other causes, that fact must be stated; and if more than one, the number of them must be detailed; the situation in life of the witnesses; the dis-

^k 1 & 2 Vict. c. 45, s. 3; *Newton v. Spencer*, 4 Bing. N. C. 174; 5 Scott, 489, 6 Dowl. 401; *Humphreys v. Harvey*, 2 Dowl. 827; 4 M. and Scott, 500; 1 Bing. N. C. 62.

^l 2 Geo. 2, c. 23, s. 10.

^m *Wilton v. Chambers*, 2 N. & P. 392; *Ex parte Nicholas*, 6 Taunt. 408; *Hodgkinson v. Mayer*, 1 Nev. and P. 397.

ⁿ *Paterson v. Powell*, 2 Dowl. 738.

^o *Brooke v. Willet*, 2 H. Bla. 435; *Eyre v. Thorpe*, 6 Dowl. 768.

^p *Othir v. Calvert*, 1 Bing. 275; 8 J. B. Moore, 239.

^q *Severn v. Olive*, and *Same v. Slade*, 8 J. B. Moore, 235; 3 B. and B. 72.

^r 22 Geo. 2, c. 46, s. 11.

^s 3 Jac. 1, c. 7, s. 1; (C. P.) H. 14 Jac. 1.

^t *Jones v. Tobin*, 4 Bing. 123; 5 Scott, 440; 6 Dowl. 251.

^u *Butler v. Hobson*, 5 Scott, 824; 7 Dowl. 157; 5 Bing. 128; *Morrison v. Harmer*, 5 Scott, 410.

tances of their respective residences from the place, city, or town where the sittings or assizes, trial or inquiry was held; and also from the residence of the plaintiff's attorney; the number of days during which they were necessarily absent; the date of the commission day;^u— (this being the time when they ought to be in attendance, particularly in common jury causes;) the actual day when the trial took place; whether the plaintiff's attorney had any other cause, and if so, how many of them; and if he was a witness in the cause, or in either of the other causes, then that he attended as such, and in how many, cases, and in what causes in particular. The allowance to a non-resident attorney is 2*l.* 2*s.* per diem, including all expences; but if upon more than one trial, one guinea per day for each. When he attends as a witness, he is allowed one guinea per day additional.^v

[57.] A sum not exceeding 20*l.*, though awarded on a reference and before any trial, is "recovered" within the meaning of the directions to the taxing officers, and therefore only comes under the reduced (2nd) scale of costs;^w and the rule is the same as to the amount given by the jury upon an inquiry of damages.^x Where some issues are found for the plaintiff and some for the defendant, each of them is entitled to the costs of the witnesses who are called exclusively in support of the issues found for him, but not of those who are examined to disprove the issues found in favour of the other.^y

[58.] The Court will not prospectively direct in what manner costs shall be taxed.^z The principle acted on is, to invest the taxing officers with a large discretion;^a and it is only upon points of taxation decided in reference to some particular principle, that a Court or a Judge will review the taxation.^b The Master, in exercising his

^u *Cosgrave v. Evans*, 2 Dowl. 443; *Platt v. Greene*, 2 Dowl. 216; *Thomas v. Saunders*, 3 Nev. and M. 572.

^v *Ex parte Whitehead*, 1 Price, (P. C.) 136.

^w *Wallen v. Smith*, 6 Dowl. 103; *Astley v. Joy*, 1 P. & D. 460.

^x *Hooppell v. Leigh*, 5 Dowl. 40; 2 Hodges, 107.

^y *Crowther v. Elwell*, 4 M. and W. 71; 6 Dowl. 697; *Richards v. Cohen*, 1 Dowl. 533; *Jourdain v. Johnson*, 5 Tyr. 524; 4 Dowl. 534; 1 Gale, 312.

^z *Roe v. Cobham*, 6 Scott, 146; 6 Dowl. 628; *Head v. Baldrey*, 8 Ad. and E. 695. ^a *Archer v. Marsh*, 7 Dowl. 541.

^b *Aliven v. Furnival*, 2 Dowl. 49; *Daniel v. Bishop*, M'Clel. 61; 13 Price, 129; *Bucknall v. Boybell*, 7 Scott, 171.

judgment, guides himself by all positive enactments, decided cases, and the rules of practice^c with respect to witnesses. He can judge and decide on the propriety^d of the whole or any part of the expences or charges. Where witnesses are called to substantiate charges in a count, upon which the plaintiff succeeds, and the witnesses for the defendant are necessary thereon, the former only is allowed the costs of witnesses.^e With respect to documentary evidence, an allowance is made in costs for the postage of foreign letters sworn to be solely applicable to the cause, and for the expences of the production and translation of such letters as are applicable to the counts on which the plaintiff obtains a verdict;^f for successful searches after a pedigree;^g and the expences attending plans used for the information of the Court at the trial of an action for the disturbance of a watercourse.^h In regard to foreign witnesses, a reasonable allowance is made in costs for the expences of bringing over to this country of necessary witnesses,ⁱ of their detention here,^j of their return,^k and for subsistence money.^l The expenses of witnesses whose testimony was admissible,^m may in the discretion of the taxing officerⁿ be allowed; and the circumstance of

^c 3 & 4 W. 4, c. 42. s. 36; *Archer v. Marsh*, 7 Dowl. 541.

^d *Platt v. Greene*, 2 Dowl. 216; *Andrews v. Thornton*, 1 M. and Scott, 670; 8 Bing. 431.

^e *Richards v. Cohen*, 1 Dowl. 533.

^f *Lopes v. De Tastet*, 3 B. and B. 292; 7 Moore, 120.

^g *Johnson v. Lawson*, 2 Bing. 341; 9 Moore, 642.

^h *Holmes v. Holmes*, 2 Bing. 75; 9 Moore, 138.

ⁱ *Cotton v. Witt*, 4 Taunt. 55; *Vice v. Anson (Viscountess)*, 3 C. and P. 19; M. and M. 76.

^j *Limergan v. Royal Exchange Assurance*, 7 Bing. 725; 5 M. and R. 805; 1 Dowl. 233; *Sturdy v. Andrews*, 4 Taunt. 697; *Anon.* 1 Chit. 89, 90 n.; *Anon.* 2 D. and R. 424; *Berry v. Pratt*, 1 B. and C. 276.

^k *Treemain v. Barrett*, and *Same v. Faith*, 1 Marsh. 463, 563; 6 Taunt. 88.

^l *Mount v. Larkins*, 8 Bing. 195; 1 M. and Scott, 357; 1 Dowl. 262; *Temperley v. Scott*, 8 Bing. 392; 1 M. and Scott, 601.

^m *Rushworth v. Wilson*, 1 B. and C. 267; *Mutchinson v. Allcock*, 1 D. and R. 165.

ⁿ *Skelton v. Seward*, 1 Dowl. 411.

their not having been actually called into the witness box,^o does not vary the case; provided they were material;^p and where the defendant obtained a *mandamus* under 13 Geo. 3, c. 63,^q to examine witnesses in India; it was held that the plaintiff, having recovered a verdict, was entitled to his costs of cross-examining them.^r

The master cannot ever tax beyond the scale laid down for travelling expenses.^s As to the number of counsel to be allowed for with reference to a trial, he has a discretion: but where a point of law was involved,^t the Courts considered it reasonable, that there should be an allowance of two counsel;^u and even three are often allowed, in a case of great difficulty and importance;^v as where there are more than nine witnesses for the plaintiff. The proper charge for a commissioner, upon the examination of witnesses, is according to the number of days during which he actually sits as such.^x In country causes, the affidavit of increase is usually made before a commissioner to take affidavits in the Court.^y

[59.] As soon as the taxation is complete, and the amount of it, by deducting the charges struck off from the gross amount, ascertained, the taxing officer adds thereto his fee for taxing; and the whole is added up, and a total found; and then if upon a *postea*, or writ of trial, an *allocatur* is made out thus:

QUEEN'S BENCH.

	£.	s.	d.	£.	s.	d.
For increased costs	10	0	0.	8	10	0
Damages in the whole	-	20	10	0.	2	0
				10	0	0
				<hr/>		
1st Jan. 1840.				20	10	0

^o *Adamson v. Noel*, 2 Chit. 200; *Hankorn v. Thomas*, 3 Smith, 361.

^p *Bagnall v. Underwood*, 11 Price, 511. ^q s. 44.

^r *Whytt v. Macintosh*, 8 B. and C. 317; 2 M. and R. 133.

^s *Radcliffe v. Hall*, 3 Dowl. 802.

^t *Grindall v. Godman*, 5 Dowl. 378.

^u *Maddison v. Bacon*, 5 Bing. N. C. 246; 7 Scott, 207.

^v *Morris v. Hunt*, 1 Chit. 544.

^x *Small v. Attwood*, 1 Y. & C. 53.

^y R. H. 1838. (1)

COURT OF COMMON PLEAS.

Delivered of Record, 7th January, 1840. E. Calley.

For increased costs	-	12	17	6..	12	2	6
Damages in the whole	-	27	0	0..	2	0	0
					12	17	6
7th January, 1840.					27	0	0

EXCHEQUER.

For the costs - 10 12 6
 Kenrick Collett, 20th Jan. 1840.

This minute is termed the "*allocatur*" of costs: and when signed by the master, and dated, is delivered by him to the attorney for the plaintiff, or party in whose favour it is made; and it then becomes the property of the plaintiff.^z Final judgment is now considered as signed;^a and these costs so taxed, now form part thereof.^b The judgment takes effect from this period, with reference to the statute of frauds,^c and in other cases, not relating to purchasers or mortgagees;^d and carries interest henceforward thereon at four per cent.^e

[60.] On applying to a judge at chambers, or to the Court, for a review of the taxation, it must be distinctly shewn, that the "*allocatur*," has been made, and what are the grounds of objection:^f *e.g.*, that refreshers actually paid have been disallowed,^g or that the master has not allowed expences paid for foreign witnesses, while they were detained in this country.^h Upon reviewing the

^z *Doe dem. King v. Robinson*, 2 Dowl. 503.

^a R. H. 4 W. 4. (3); *Butler v. Bulkeley*, 8 J. B. Moore, 104; 1 Bing. 233; *Lambirth v. Bowington*, 2 Bing. N. C. 149; *Godson v. Lloyd*, 1 Gale, 244.

^b *Rex v. Walcott*, Ca. Parl. 127; *Salter v. Slade*, 3 Nev. and M. 717.

^c 29 Car. 2, c. 3, s. 14. *Butler v. Bulkeley*, 1 Bing. 233; 8 Moore, 104; *Salter v. Slade*, 3 Nev. and M. 717; 1 & 2 Vict. c. 110, s. 13, 19.

^d 1 & 2 Vict. c. 110, s. 19.

^e s. 17.

^f *Mount v. Larkins*, 1 Dowl. 262; 1 M. and Scott, 357; *Skelton v. Seward*, Id. 411; *Heald v. Hall*, 2 Dowl. 163; *Cleaver v. Hargrave*, 2 Dowl. 689; *Aliven v. Furnival*, 2 Dowl. 49.

^g *Craven v. Sanderson*, (Q. B.) 1838, MSS.

^h *White v. Mayer*, 5 Tyr. 481, p. 53, *ante*.

master's taxation, there are not any costs allowed.ⁱ The affidavits in support of the objections should specify them;^j and all affidavits intended to be used on the argument should be referred to in the rule.^k If the rule is discharged,^l it is generally so with costs.

[61.] Trifling errors in the entry of the judgment,^m as "counts" for "issues," "defendant recover costs," instead of "defendants," are considered by the courts as clerical only; and will be allowed to be amended even after error brought thereon, on payment to the plaintiff of the costs of amendment.ⁿ

ⁱ *Ward v. Bell*, 2 Dowl. 76; *Parsons v. Pitcher*, 6 Dowl. 600; 6 Scott, 298.

^j *Williams v. Hunt*, 1 Chit. 321; *Daniel v. Bishop*, M'Clel. 61; 13 Price, 129; *Aliven v. Furnival*, 2 Dowl. 49.

^k *Cliffe v. Prosser*, 2 Dowl. 21.

Williams v. Wynne, 9 Price, 344.

ⁿ *Paddon v. Bartlett*, 3 Ad. and Ell. 887.

CHAPTER III.

Costs of the Defendant.

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| <ol style="list-style-type: none"> 1. General Rules. 2. Costs on Summons. 3. Staying Proceedings. 4. Amendment of Writ. 5. On Arrest. 6. Outlawry: Waiver. 7. On Discharge from Arrest. 8. Sheriff's and Bailiff's Fees. 9. Security for Costs. 10. Special Bail. 11. Demand of Declaration. 12. Common Counts. 13. Oyer: Copy. 14. Payment into Court. 15. Non Pros: Discontinuing. 16. Motion for Judgment "as in case of a nonsuit." 17. Costs of the Day. 18. Preparatory Proceedings before Trial. 19. Demurrer. 20. Issue by Record: Special Case. | <ol style="list-style-type: none"> 21. The Issue. 22. Plea <i>quam darrein continuance</i>. 23. Demurrer to Evidence: Bill of Exceptions. 24. Nonsuit. 25. Verdict: General Costs: Pleading Issues. 26. General Liability. 27. Certificate of Judge. 28. Several Defendants. 29. Motions as to New Trials, &c. 30. ——— for Costs (defendant arrested for more than found due.) 31. Acts relating to Courts of Request. 32. Waste. 33. Double and Treble Costs. 34. Taxing Costs. 35. Amendment. 36. Error in Fact. 37. Satisfaction. |
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[1.] As a rule, wherever the plaintiff would, if he had succeeded, have been entitled to costs, the defendant is also so reciprocally;^a and the latter has his costs if he succeeds in a penal action.^b With respect to the costs of a defendant, it is important to remark, that since the New Rules as to pleadings,^c a defendant, even though he does not succeed in the action, usually gets some costs.

^a *Greetham v. Theale*, 3 Burr. 1723; *College of Physicians v. Harrison*, 9 B. and C. 524; 4 M. and R. 404.

^b 18 Eliz. c. 5, s. 3; *Jegues v. Stevenson*, Bull. Ni. Pri. 194; *Wilkinson, q. t. v. Allot*, 1 Cowp. 366; *Law q. t. v. Worrall*, 1 Wils. 177; *Dover q. t. v. Hodgson*, 1 Wils. 139; *Elde q. t. v. Stevens*, 2 Ld. Raym. 1333.

^c R. H. 2 W. 4 (74); *Milner v. Graham*, 2 Dowl. 422.

[2.] Upon the writ of summons being issued,^d the defendant is allowed four days after the service to pay the debt and costs;^e and if upon a taxation more than one-sixth is taken off, he is entitled to the costs of taxation, and to be paid by the plaintiff's attorney.^f The course in practice is, for the defendant's attorney to obtain a judge's order for taxing, and an appointment thereon from one of the masters, *e. g.*

"I appoint 23d December,
"11 o'clock,
"R. Goderich."

At this appointed time the bill of costs is taxed, and the master indorses upon the order his *allocatur*, *e. g.*

	£	s.	d.
Amount of bill	-	-	3 18 6
Paid	-	-	3 10 0
			<hr/> 0 8 6
	£	s.	d.
Deduct by taxation	-	0	19 0
Costs of taxation-	-	1	6 0
			<hr/> £2 5 0
			0 8 6
			<hr/> £1 16 6

The plaintiff's attorney to refund to the defendant
23d Jan. 1840. £1 16 6

[3.] Where a summons is taken out to stay proceedings, upon payment of a certain sum and the costs; the refusal to accept that sum by the plaintiff, will not render him liable to the subsequent costs; but if the sum thus tendered be afterwards paid into Court, and accepted by the plaintiff; the latter will, if the refusal be shewn to be vexatious,^g be liable to the subsequent costs.^h

^d R. H. 2 W. 4, II.; *Gale v. Winks*, 5 Dowl. 348; 3 Bing. N. C. 294; 3 Scott, 667; *Tomkins v. Chilcott*, 2 Dowl. 187.

^e *Bowditch v. Slaney*, 4 Dowl. 140; 1 Hodges, 224; 2 Scott, 197; 2 Bing. N. C. 142.

^f *Ward v. Gregg*, 5 Dowl. 729.

^g *Cumming v. Columbine*, 6 Dowl. 373.

^h *Gower v. Elkins*, 3 M. and W. 216; 2 Dowl. 335; *Roe v. Cobham*, 6 Dowl. 628; *Parsons v. Pitcher*, 4 Bing. N. C. 306; 6 Dowl. 432; 5 Scott, 791.

[4.] If, with a view of saving¹ the statute of limitations,² the plaintiff is allowed to amend his writ of summons, it is upon the terms of "paying costs;"³ and the rule is the same, where an amendment in the indorsement of the debt and costs upon the writ is allowed.¹ In these cases, the defendant has four additional days allowed him, for paying the debt and costs, after the amendment is made, and the costs thereon are paid.^m But where, after service of a copy of the writ upon him, he receives notice not to appear to it, there are not any costs upon either side;ⁿ a writ of *scire facias* may be amended on the terms of paying costs to the defendant.^o

[5.] Where a defendant is arrested under a judge's order, he can apply to any^p of the judges at chambers for a summons, or to the Court for a rule,^q calling on the plaintiff to shew cause why the *capias* (if irregular) should not be set aside for irregularity, and why the bail-bond should not be cancelled; or why the deposit of the debt and 10*l.* to answer the costs, should not be returned; or why the defendant, if in custody, should not be discharged. But if the objection is to the arrest only, the application must point to the latter result merely. The act gives power to the Judge or to the Court to grant or refuse the application with costs; or to make such other terms as he or they may see fit; and where the right to the discharge out of custody, exists either for this or any other ground; it is not waived^r by demanding particulars of the plaintiff's demand.^s

[6.] Where proceedings to outlawry or waiver are taken oppressively^t and unnecessarily, the Court or

¹ *Partridge v. Wellbank*, 5 Dowl. 93.

² 21 Jac. 1, c. 16, s. 3.

³ *Urquhart v. Hart*, 3 Dowl. 17; *Shirley v. Jacobs*, *Id.* 101; *Cooper v. Waller*, *Id.* 167.

¹ *Trotter v. Bass*, 1 Bing. N. C. 516; 3 Dowl. 407; 1 Scott, 403; 1 Hodges, 23; *Edge v. Shaw*, 4 Dowl. 189.

^m *Cooper v. Waller*, 3 Dowl. 167.

ⁿ *Wintle v. Hogg*, 7 Dowl. 623.

^o *Machay v. Gwen*, 1 Alcock and Napier, 397. (Irish.)

^p 1 & 2 Vict. c. 110, s. 6; *Bateman v. Dunn*, 7 Dowl. 105; 6 Bing. N. C. 49.

^q *Larchin v. Willan*, 7 Dowl. 11; 4 M. and W. 351.

^r R. H. 2 W. 4, s. 33.

^s *Hodgeson v. Dowell*, 3 M. and W. 284; 6 Dowl. 364; 1 H. and W. 29.

^t *Hunter v. Whitfield*, 6 Dowl. 70.

a judge will reverse them, and without any costs thereon being payable by the defendant;^u and if it can be shown by affidavit that the plaintiff knew of the defendant having an attorney in this country; and yet that he secretly procured to a *capias* or *distringas* a return of *non est inventus*, and with a view to outlawry; the Court or a judge will set aside the proceedings, and with costs payable by him.^v

[7.] If a married woman, on being arrested, applies upon the ground of coverture for her discharge out of custody, she ought also to ask for her costs; as those incurred upon such an application are not considered as "costs in the cause."^w

[8.] In case of the bailiff who arrests a defendant making him give either for searching the office, for the bail-bond, for receiving the deposit under the statute, or for any other pretence, greater fees than those allowed in the scale of fees published under the authority of the Masters of the Courts; the Court will compel the sheriff to refund the excess, and also to pay the costs of the application.^x

[9.] The right of a defendant to call upon the plaintiff to give security for costs, before he is allowed to proceed further in the action, is viewed as *strictissimi juris*,^y but is allowed in certain cases, *e. g.* 1. For payment of the former costs where a second action of ejectment is brought upon the same title, and for the same premises as in a former suit, and in which the costs remain unpaid,^z though it was not tried.^a 2. And for security as to costs, in the case of the sovereign of a foreign state^b suing in a Court here.^c 3. A wife suing

^u *Pigou v. Drummond*, 4 Scott, 573; 1 Bing. 354.

^v *Id.* 1 Scott, 264; 1 Bing. N. C. 354; *Hunter v. Whitfield*, 6 Dowl. 70.

^w *Mummery v. Campbell*, 4 Moore and Scott, 379; 10 Bing. 511; 2 Dowl. 798.

^x 1 Vict. c. 55, ss. 1, 4.

^y *Ex parte Tull*, 1 M. and A. 80.

^z *Crundell v. Bodily*, 8 Mod. 225; Stra. 554; *Holdfast v. Jackson*, Barnes, 133; *Doe d. Standish v. Roe*, 5 B. & Ad. 878; 2 Nev. & M. 468.

^a *Doe d. Langdon v. Langdon*, 5 B. and Ad. 864; 2 Nev. and M. 848; *Doe v. Shadwell*, 7 Dowl. 527.

^b *Emperor of Brazil v. Robinson*, 5 Dowl. 322; 1 Nev. and P. 817; 6 Ad. and Ell. 801.

^c *King of Greece v. Wright*, 6 Dowl. 12.

in her husband's name,^d and not having any separate property of her own ^e or suing in their joint names, and without his authority.^f 4. The assignee of a bond, or other chose in action, suing in the name of the assignor who is abroad.^g 5. Where the plaintiff is resident out^h of England and Wales, permanently,ⁱ and not temporarily^j only; and this is so, though he sues in *forma pauperis*; or where a public company, trading out of the jurisdiction, are the plaintiffs.^k 6. If a person who has petitioned the Court for the Relief of Insolvent Debtors for his discharge, proceeds in the action,^l after he has executed, or there is an assignment.^m 7. Where the plaintiff becomes a bankrupt, and his assignees being applied to by the defendant,ⁿ resolve to interfere,^o and also resolve to proceed in the action.^p 8. Where the plaintiff removes all his furniture, and absconds.^q 9. Or in ejectment, if the lessor of the plaintiff is an infant,^r and a Judge, on setting aside proceedings for irregularity, may stay further proceedings until they are paid.^s But

^d *Morgan v. Thomas*, 2 Dowl. 332.

^e *Harrison v. Almond*, 1 H. and W. 519; 4 Dowl. 321.

^f *Morgan v. Thomas*, 2 Dowl. 332; 2 C. & M. 388.

^g *Yonge v. Yude*, 3 Ad. and Ell. 311.

^h *Mahon v. Martinez*, 4 J. B. Moore, 356; *Maloney v. Smith*, 1 M'Clel. & Y. 213; *Limerick Railway Company v. Fraser*, 4 Bing. 394; 1 M. & P. 23; *Annesley v. Simeon*, 4 Madd. 390. *Evering v. Chiffenden*, 7 Dowl. 536.

ⁱ *Gurney v. Key*, 3 Dowl. 559; 1 H. and W. 203; *Edinburgh and Leith Railway Company v. Dawson*, 7 Dowl. 573.

^j *Taylor v. Fraser*, 2 Dowl. 622.

^k *Limerick and Waterford Railway Company v. Fraser*, 4 Bing. 394; 1 M. and P. 23; 7 Dowl. 573.

^l *Doyle v. Anderson*, 2 Dowl. 596; *Heaford v. M'Knight*, 2 B. and C. 579; 4 D. and R. 81.

^m 1 & 2 Viet. c. 110, s. 35; *Andrews v. Marris*, 7 Dowl. 712.

ⁿ *Reynolds v. Howden*, 1838, MS.

^o 6 G. 4, c. 16; *Wilkinson v. Marshall*, 4 Tyr. 993; *Webb v. Ward*, 7 T. R. 296; *Mason v. Polhill*, 2 Dowl. 61; 1 C. & M. 620; 3 Tyr. 595; *Beckham v. Knight*, 4 Bing. N. C. 74; 5 Scott, 336; 6 Dowl. 227; *Doe d. Colnaghi v. Blick*, 5 Scott, 714.

^p *Webb v. Ward*, 7 T. R. 296; *Manley v. Mayne*, 3 M. and R. 381; *Mason v. Polhill*, 2 Dowl. 61; 3 Tyr. 595.

^q *Rogers v. Banger*, 4 Dowl. 411.

^r *Doe d. Roberts v. Roberts*, 6 Dowl. 556.

^s *Wenham v. Downes*, 5 Nev. and M. 244; 3 Ad. and Ell. 450; 1 Har. and W. 324.

such an application is not allowed, where the plaintiff is a peer^t of England,^u Scotland,^v or Ireland;^w nor if she is a peeress,^x (except upon her becoming a widow, and being noble by marriage only, she marries a commoner^y), nor where the plaintiff is a member of the House of Commons;^z the High Commissioner of the Ionian Islands;^a an officer in the British^b or a foreign service,^c though during a civil war there;^d or a mariner, provided his family are here, though it be in lodgings merely^e; nor because one only^f of two joint lessors in ejectment, or two only out of three co-plaintiffs are abroad; nor from a foreign ambassador here;^g nor upon the ground of mere poverty,^h however extreme, and though the plaintiff sues *qui tam*, and in several actions, and by the same attorney; nor because a third person has instigated and encouraged the action.ⁱ

Where the action is in ejectment, the intended defendant must enter into the Consent Rule, before he can make an application as to security for costs; and in other actions an appearance must be previously^k entered.

^t *Earl Ferrers v. Robins*, 2 Dowl. 636.

^u *Walker v. Lord Grosvenor*, 7 T. R. 171; *Rex v. Bishop of St. Asaph*, 1 Wils. 332.

^v 5 Anne, c. 8, art. 23; *Digby v. Alexander*, 1 Dowl. 713; *Digby v. Sterling*, 8 Bing. 55; 1 M. & Scott, 116; 1 Dowl. 248.

^w 39 & 40 Geo. 3, c. 67, Art. 4; *Coates v. Lord Hawarden*, 7 B. & C. 268; 1 M. & R. 110.

^x *Countess of Rutland's case*, 6 Rep. 53 b.

^y Co. Litt. 16 b; 2 Inst. 50; Dy. 79 b; Ow. 81.

^z Holt, 264; *Barnardo v. Mordaunt*, 1 Ld. Ken. 125.

^a *Lord Nugent v. Harcourt*, 2 Dowl. 578.

^b *Evering v. Chiffenden*, 7 Dowl. 536.

^c *Frodsham v. Myers*, 4 Dowl. 280; 1 H. and W. 526.

^d *O'Lawler v. Macdonald*, 3 J. B. Moore, 77; 8 Taunt. 736.

^e *Ford v. Boucher*, 1 Hodg. 58.

^f *Wilson v. Minchin*, 1 Dowl. 299; 2 C. and J. 87; 2 Tyr. 166; *Doe v. Roe*, 1 Hodg. 315; *Anon.* 1 Dowl. 300; 2 C. and J. 88.

^g *De Montellano (Duke) v. Christian*, 5 M. and S. 503.

^h *Gregory v. Elvidge*, 2 Dowl. 259; 2 C. M. and R. 336; 4 Tyr. 235; *Jones v. Edwards*, 5 Dowl. 369.

ⁱ *Hearsey v. Pechell*, 5 Bing. N. C. 466; 7 Dowl. 437; 7 Scott, 477.

^k *Bonnefor v. Russell*, 5 Dowl. 555; *De la Preuve v. The Duke de Biron*, 4 T. R. 697.

Previously to the motion, a demand¹ for the security should be made, as a mere notice of an intention to apply to the Court is not sufficient, it not being equivalent to a demand and refusal. In order that the rule may operate until cause is shewn upon it, as a stay of proceedings,^m a previous application for security for costs should be made to the plaintiff, or to his attorney; but even if this is done, a rule granted upon the last day of any term cannot so operate.ⁿ This application is also requisite, in order that the costs of the motion may be ordered in favour of the applicant,^o and the notice in either case should be in writing. The application must always be made promptly,^q and immediately upon learning the facts which constitute the ground for it.^r It will be refused where there has been a subsequent delay,^s and so shewn by the plaintiffs; unless it was caused by the act of the latter, or their attorney. It is usually made before^t issue is joined; though if the circumstances are special it is allowed even just before^u the trial, and the then state of the action must be shewn; but not in general after an undertaking for short notice of trial;^v or in any case pending a rule for a new trial;^w or after^x judgment. Where

¹ *Huntley v. Bulmer*, 6 Scott, 247; 6 Dowl. 633.

^m *Adams v. Brown*, 9 Bing. 81; 2 M. & Scott, 154; 1 Dowl. 273; *Baile v. De Bernales*, 1 B. and A. 331.

ⁿ *Gronow v. Pointer*, 3 Dowl. 571.

^o *Bohrs v. Sessions*, 2 Dowl. 710; *Jones v. Jones*, 1 Dowl. 313; 2 C. & J. 207.

^q *The King of Greece v. Wright*, 6 Dowl. 12; *Young v. Rushworth*, 8 Ad. & El. 479, (n); 16 Leg. Ob. 316.

^r *Duncan v. Stint*, 5 B. and A. 702; 1 D. and R. 348; *Wainwright v. Bland*, 2 C. M. and R. 740; 4 Dowl. 541; 1 Tyr. and G. 137.

^s *Jones v. Jones*, 2 Tyr. 216; 2 C. and J. 207; 1 Dowl. 313; *Fry v. Wills*, 3 Dowl. 6.

^t R. H. 2 W. 4, (98).

^u *Doe d. Martin v. Parker*, 2 C. M. and R. 457; 4 Tyr. 144; 2 Dowl. 373; *Huntley v. Bulmer*, 6 Scott, 247; 6 Dowl. 633; *Edinburgh Company v. Dawson*, 7 Dowl. 573.

^v *De Montellano (Duhe) v. Garcias*, 1 Bing. 67; 7 J. B. Moore, 361; *Michel v. Pariski*, 2 H. Bla. 593; *Steel v. Lacy*, 3 Taunt. 273; *Muller v. Gernon*, 3 Taunt. 272.

^w *Oxenden v. Cropper*, 4 Dowl. 574; 1 H. and W. 642.

^x *Bohr v. Sessions*, 2 Dowl. 710; *Luzalletti v. Powell*, 1 Marsh, 376.

the security has been entered into, the insolvency of the sureties,⁷ or a suggestion that the expences of witnesses to support the defendant's pleas of justification, will greatly exceed the sum first named,² do not either of them form any ground for renewing or increasing the security, or its amount. The defendant may, though he resides abroad,⁸ make the application; but the merits of the action, or its hardship on him, are not material in support of it.⁹ Where the plaintiff sues *in forma pauperis*,¹⁰ he must be dispaupered before he can be called upon to give security for costs. The affidavit upon which the application is made, must state "positively;"^d and not on information^e or belief,^f the precise grounds, *e. g.* the absence abroad, and where.^g The application, and also the rule or order, can only refer to the "future"^h costs; and where the security is given; the subsequent return to England of the plaintiff will not operate to discharge the sureties from liability.¹ If a wife uses the name of her husband as plaintiff in an action, without his consent, he is entitled to stay the proceedings until security for the costs is given to himself.^j But the defendant in the action cannot make such an application.^k

[10.] The defendant is, upon putting in special bail in due time, and with an affidavit of their property,¹ in its

⁷ *Jones v. Jacobs*, 2 Dowl. 442.

⁸ *Pisani v. Lawson*, 5 Scott, 418; *Kent v. Poole*, 7 Dowl. 573.

^a *Baxter v. Morgan*, 2 Marsh. 80; 6 Taunt. 379.

^b *Ciragno v. Hassan*, 1 Marsh. 421; 6 Taunt. 20.

^c *Mylett v. Hucker*, 5 Dowl. 647; *Doe d. Leppingwell v. Trussell*, 6 East, 505.

^d *Adams v. Brown*, 1 Dowl. 273; 9 Bing. 81; 2 M. & Scott, 154.

^e *Oliva v. Johnson*, 5 B. and A. 908.

^f *Sandys v. Kohler*, 6 Dowl. 274.

^g *Doe d. Selby v. Alston*, 1 T. R. 493; *Harvey v. Jacob*, 1 B. and A. 159.

^h *Oxenden v. Crupper*, 4 Dowl. 574.

ⁱ *Badnall v. Haley*, 4 M. and W. 535; 7 Dowl. 19.

^j *Morgan v. Thomas*, 2 C. and M. 388; 2 Dowl. 232; *Harison and Wife v. Almond*, 1 H. and W. 519; 4 Dowl. 321.

^k *Mingotti v. Drummond*, 1 Lord Ken. 469; *Chambers v. Donaldson*, 9 East, 470.

¹ *Webb's bail*, 1 Dowl. 446; R. T. 1 W. 4, (3).

material parts substantially^m agreeing with the form prescribed,ⁿ and the Rules of Court,^o provided they justify, entitled to his costs thereon.^p If there is a material variance, he cannot have them allowed at the time of justification,^q but they become "costs in the cause."^r Upon further time being given to the plaintiff for inquiry after the defendant's bail, it is on payment of costs by the former.^s The defendant having before^t issue joined in fact^u or law, justified his bail, has a right to have out of Court his deposit of debt, and 20*l.* for the costs.^v

[11.] A demand in writing for a declaration having been served, and a default made for four days afterwards;^w the defendant is at liberty to sign a judgment of *non pros.*, and upon which costs in all cases follow,^x except in ejectment ^y

[12]. The proper length of the common counts in the actions of assumpsit and debt, is explained by the Rules of Court; and if it is extended materially beyond, and without an adequate reason, there are not any costs allowed thereon, either as between party and party, or attorney and client.^z And where any counts in a declaration are manifestly^a for the same identical cause of action,^b *e. g.* a count for debt as to the treble value of

^m *Brown's bail*, 5 Dowl. 220.

ⁿ R. T. 1 W. 4. Sched. ^o R. H. 2 W. 4, (19).

^p *Weller's bail*, 6 Dowl. 312; 1 W. W. and H. 76.

^q *Carter's bail*, 5 Dowl. 577; *Miller's bail*, *Ibid.* 602; 2 M. and W. 368.

^r *Brown v. Ahrenfeldt*, 4 M. and W. 76; 7 Dowl. 46.

^s *Dicas v. Smith*, 3 Scott, 600.

^t *Blaine v. Cox*, 6 Dowl. 266; 1 W. W. and H. 84.

^u 7 & 8 G. 4, c. 71, s. 3; *Morris v. Shepherd*, Exch., 1838, MS.

^v s. 3; *Hanwell v. Mure*, 2 Dowl. 155.

^w R. T. 1 W. 4 (8); *Teulon v. Grant*, 5 Dowl. 153.

^x *Davies v. James*, 1 T. R. 371; 23 Hen. 8, c. 15; 8 Eliz. c. 2; 4 Jac. 1, c. 3; *Clark v. Mayor of Berwick*, 4 B. and C. 649; 7 D. & R. 104.

^y *Goodright d. Ward v. Badtittle*, 2 W. Bla. 763; *Doe d. Vernon v. Roe*, 7 Ad. and Ell. 14.

^z R. T. 1 W. 4, (6); and *Ibid.* Schedule.

^a *Gardner v. Bowman*, 4 Tyr. 412; *Cholmondeley v. Payne*, 3 Bing. N. C. 708; 5 Dowl. 638; *Roy v. Bristow*, 5 Dowl. 452; 2 M. and W. 241. ^b R. H. 4 W. 4, (5).

predial tithes not set out, and another for tithes bargained and sold;^c a judge at chambers will order that the defendant shall have his costs thereon, and also of the application.^d

[13.] As a general rule, the defendant is entitled to demand *oyer*, i. e. an inspection of any specialty, letters testamentary, and letters of administration alleged in the declaration.^e In the case of a bond with a condition, his demand may refer to both of them, or one only;^f when made of letters testamentary,^g such a demand entitles him to a copy of the letters and of the will; or if the plaintiff relies upon the "act of court," or a minute of the grant, and according to the practice indorsed upon, or entered at the foot of the original will;^h the defendant has a right to a copy of such act or minute. Where the demand refers to letters of administration, a copy thereof, and of all others set out must be given; and if an exemplification is relied upon, then there must be a copy of that document furnished.ⁱ If any of these documents are material to the case of the defendant,^j he may set them out at length at the head of his pleas,^k and still treat it as a parcel of the declaration; and the costs of doing so are part of his "costs in the cause."

[14.] Where there is a plea of payment into court,^l there are four subsequent events to be considered with reference to costs, and whether the payment be of a money demand,^m or by leave of a judge,ⁿ for unliquidated

^c *Lawrence v. Stephens*, 3 Dowl. 777.

^d R. H. 4 W. 4, (6); *Ward v. Graystock*, 4 Dowl. 717.

^e Hobart, 217, 233; Holt, 211; *Goodrick v. Turley*, 4 Dowl. 431; 1 Gale, 354; 2, C. M. & R. 694; 1 Tyr. and G. 149.

^f *Longmore v. Rogers*, Willes, 288; Barnes, 263.

^g *Shepherd v. Shorthose*, 1 Stra. 412; *Hensloe's case*, 9 Rep. 36 b; *Daley v. Mahon*, 4 Bing. N. C. 235; 6 Dowl. 395; 5 Scott, 606; *Canterbury (Archbishop) v. Tubb*, 5 Dowl. 627; 3 Bing. N. C. 789; 3 Hodges, 101; 4 Scott, 543.

^h 1 Jac. 514

ⁱ *Doe v. Gunning*, 2 Nev. and P. 260; *Doe v. Mew*, *Ib.* 266, n.

^j R. H. 2 W. 4, (44); *Jeffery v. White*, 2 Dougl. 476; *Wallace v. Cumberland*, 4 T. R. 370; *Ferguson v. Macreth*, *Id.* 371, note.

^k 1 Saund. 317, note (2); *Jeffery v. White*, 2 Dougl. 476.

^l R. T. 1 Vict. (1.)

^m R. H. 2 W. 4, (55.)

ⁿ R. H., 4 W. 4 (18.)

damages.^o *e. g.* 1. Where the plaintiff accepts the money paid into Court,^p in satisfaction and discharge of the cause or causes of action in respect of which it was paid in; in such a case, provided there is not any other plea, he has his entire costs.^q 2. If there is another plea, but not any other cause of action; he has his general "costs of the cause," and must in his replication^r enter a *nolle prosequi* as to the residue;^s or a *non pros.* as to that part may (after a rule to reply is out) be signed, or else these latter costs may, on taxation, be deducted from the general costs.^t 3. If there is another plea,^u or there are other pleas, and also an additional cause of action, the plaintiff has his general costs of the cause; and he must, (a like rule being out) in order to prevent a *non pros.* enter a *nolle prosequi* as to such additional cause of action.^v But where he replies excess, or proceeds in the action for the additional cause of action, the issue is, and the costs are taxed for him, on the plea of payment into Court alone,^w if he fails in the action; or if he succeeds, then he has his costs in addition, upon the cause of action upon which he has so succeeded; and where the plaintiff, after plea pleaded, obtains leave to amend his declaration on payment of costs, by increasing the amount of damages; and the defendant after the amendment, pays money into court, by which one of his pleas become unavailable; it is held that he is not entitled to the costs of such plea.^y Where there is a new assignment in an action of tort, and money is paid into court,^z the plaintiff has his costs of the writ and of the

^o 3 & 4 W. 4, c. 42, s. 21; R. H. 2 W. 4, (55.)

^p R. T. 1 Vict. (2.) ^q *Farrant v. Morgan*, 1 Gale, 156.

^r *Topham v. Kidmore*, 5 Dowl. 676.

^s 3 & 4 W. 4, c. 42, s. 33; 3 Scott, 761; 3 Bing. N. C. 331.

^t *Goodee v. Goldsmith*, 5 Dowl. 288; 2 M. and W. 202.

^u 4 Anne, c. 16, s. 4; R. H. 2 W. 4, (74); *Milner v. Graham*, 2 Dowl. 422; *Twigg v. Putts*, 4 Dowl. 266; *Doe v. Webber*, 4 Nev. and M. 381; 1 H. and W. 10; 2 Ad. and El. 448; *Gosbell v. Archer*, 2 Ad. and El. 500; 1 H. and W. 559.

^v *Topham v. Kidmore*, 5 Dowl. 676; *Emmett v. Standen*, 3 Mee. and W. 497; 6 Dowl. 591.

^w R. T. 1 Vict.; *Elliott v. Callow*, 2 Salk. 527; *Malcolm v. Fullerton*, 2 T. R. 648.

^y *Gould v. Oliver*, 5 Bing. N. C. 115; 6 Scott, 884.

^z *Griffiths v. Jones*, 5 Dowl. 167.

new assignment, and the other costs belong to the defendant. If under an order to stay proceedings upon payment of debt and costs, the plaintiff has offered to him and refuses the same amount of money, which on being paid into Court he accepts; he is only allowed upon taxation the costs incurred by him at the time of such offer.^a

[15.] Except where it arises with reference to a plea in abatement,^b a *non pros* either before or after declaration,^c even in penal^d actions, always entitles the defendant to his costs;^e and where after plea in bar pleaded, the plaintiff takes out a rule to discontinue,^f he must by the terms of it consent to pay the defendant's costs; and further, that if they are not paid within four days after taxation, a *non pros* may be entered. In such a case, if after the costs have been taxed under the rule, default is made in payment;^g there must be a demand in writing made for them, and upon a refusal the action remains;^h subject, however, to the right of the defendant to sign a judgment of *non pros*;ⁱ and this right is not affected though the latter becomes insolvent.^k Upon a *non pros* being signed, the costs incurred upon the above rule are taxed for the defendant, as part of his "costs in the cause."^l The plaintiff is also liable to the costs of the defendant, on the entry of a *nolle prosequi*.^m But on entry of a *cassetur breve* there are not any costs.ⁿ

^a *Parsons v. Pitcher*, 4 Bing. N. C. 306; 2 Dowl. 432; 5 Scott, 791.

^b *Micklam v. Bate*, 8 B. and C. 642; 3 M. and R. 91.

^c 13 Car. 2, s. 2, c. 2; *Oldham v. Burrell*, 7 T. R. 26; *Davies v. James*, 1 T. R. 371.

^d 18 Eliz. c. 5, s. 1.

^e 4 Jac. 1, c. 3, s. 2.

^f R. H. 2 W. 4, (106); *Doe dem. Postlewaite v. Neale*, 6 Dowl. 166; 8 Eliz. c. 2, s. 3; but where the person acting as the plaintiff is not an attorney, this may be without costs. *Paterson v. Powell*, 2 Dowl. 738; 3 M. & Scott, 195. So also if there was fraud in the conduct of the defendant, *Poensgen v. Chanter*, 6 Scott, 300. ^g *Cooper v. Holloway*, 1 Hodges, 76.

^h *Molling v. Backholts*, 3 M. and S. 153; *Whitmore v. Williams*, 6 T. R. 765; *Edgington v. Proudman*, 1 Dowl. 152; *Lyon v. Moylan*, 1 Alcock and Napier, 112. (*Irish*.)

ⁱ R. H. 2 W. 4; *Cooper v. Holloway*, 1 Hodges, 76.

^k *Hiskett v. Biddle*, 3 Dowl. 634.

^l 2 Saund. 73.

^m 8 Eliz. c. 2, s. 2; *Cooper v. Tiffin*, 3 T. R. 511.

ⁿ Tidd's Pr. 9th ed. 683.

[16.] The costs incurred by the defendant upon a motion made by him for "judgment as in case of a non-suit,"ⁿ and discharged upon a "peremptory undertaking;" are, if he afterwards succeeds in the action, part of his "costs in the cause."^o If his rule is made absolute,^p he is entitled to these costs, and without any specific application for them; and when such a rule absolute, is, on the application of the plaintiff, and on special facts shewn, opened; so as to let him in to try the cause;^q or where he obtains an enlargement of the peremptory undertaking;^r the terms are in ordinary cases "on payment of costs" to the defendant.^s

[17.] "Costs of the day" are allowed to the defendant,^t where notice of trial has been given by the plaintiff,^u and there has not been either a countermand^v or continuance^w of notice of trial, or any such in due^x time; and there is not any sufficient reason for the default in not trying the cause.^y If the cause was made a *remand*,^z whether at the sittings in town, or at the assizes; these costs cannot be moved for with respect to such non-trial;^a but they will be incurred, though a proposal to refer the case was made after the commission day.^b These costs may be had by the defendant, though he

ⁿ 14 Geo. 2, c. 17, s. 3; 23 Hen. 8, c. 15; 4 Jac. 1, c. 3; 8 & 9 W. 3, c. 11, s. 3.

^o *Brown v. Tanner*, M'Clel. 593; 13 Price, 803; *Goodhall v. Ray*, 4 Dowl. 1; 1 H. and W. 233.

^p *Johnson v. Smith*, 1 Dowl. 421.

^q *Johnson v. Smith*, *supra*, R. H. 1 Vict.; *Rex v. Sheriff of Middlesex*, 1 Chit. 445.

^r *Pitt v. Evans*, 2 Dowl. 226; *Percival v. Bird*, 4 Dowl. 746; *De Rutzen v. John*, 5 Dowl. 400.

^s *Dennehaye v. Richardson*, 4 Dowl. 564; 1 H. and W. 653.

^t R. M. 1654, (18).

^u *Doe d. Lindsey v. Edwards*, 2 Dowl. 468; *Partington v. Wyatt*, 6 Bing. 171; 3 M. and P. 316.

^v R. H. 2 W. 4, (62).

^w R. M. 1654, (21) C. P.; *Stewart v. Abraham*, 2 Dowl. 709; 2 C. & J. 235; 2 Tyr. 728; *Wardle v. Acland*, 2 Dowl. 28.

^x *Tyte v. Steventon*, 2 W. Bla. 1298; *Weak d. Burge v. Callaway*, 7 Price, 531. ^y *Monk v. Bonham*, 2 Dowl. 336.

^z *Walters v. Weatherby*, 3 Dowl. 328; 4 M. and W. 407; 7 Dowl. 86.

^a *Gains v. Bilson*, 1 M. and P. 87; 4 Bing. 414.

^b *Eaton v. Shuckburgh*, 2 Dowl. 624.

also brings the cause down by proviso;^c and may be applied for upon a default being made, and without moving for judgment as in case of a nonsuit; but after they have been applied for, the latter motion with respect to the same default in not trying, is not allowed;^d or the application may be made, after the motion for judgment as in case of a nonsuit has been discharged upon a peremptory undertaking;^e and in the latter case, if the costs of the day appear from the affidavit upon which the motion was founded to have been incurred, they are usually awarded as part of, and in the same rule;^f but not as a condition precedent with respect to the future trial;^g and if the rule is made absolute, it does not mention these costs.^h Where a plaintiff sues *in forma pauperis*,ⁱ and is, though it arises from a want of necessary evidence,^j guilty of vexatious^k delay; the defendant, upon such a default being made, is entitled to move (by a rule to shew cause) for these costs. The defendant's right to these costs is not taken away, though he afterwards fails in the cause,^l and he may apply for them at any time while the cause remains in Court.^m In an action of ejectmentⁿ they are moved for under the terms of the consent rule. The course in practice with respect to such a motion is thus; an affidavit is made by the defendant's attorney, or his managing clerk, stating the fact of notice of trial having been given upon the part of the plaintiff, for what sittings, or assizes; or for what time, upon a writ of trial, or a writ of inquiry; and the default in

^c *Blow v. Wyatt*, 4 M. and W. 407; 7 Dowl. 86.

^d R. H. 2 W. 4, (70.)

^e *Doe v. Edwards*, 2 Dowl. 572; *Ray v. Sharp*, 4 Dowl. 354.

^f *Pearcy v. Owen*, 1 Dowl. 362; *Lynniker v. Barr*, *ib.* 563; *Partington v. Wyatt*, 6 Bing. 171; 3 M. and P. 316.

^g R. H. 2 W. 4, (70); *Doe d. Hope v. Carter*, 1 M. and Scott, 516; 8 Bing. 330; *Gibbs v. Gales*, 7 Dowl. 325.

^h *Johnson v. Smith*, 1 Dowl. 421.

ⁱ *Doe v. Edwards*, R. H. 2 W. 4, (110).

^j *Doe dem. Leppingwell v. Tussell*, 6 East, 584.

^k *Faur v. French*, 5 Dowl. 554.

^l *Redit v. Lucock*, 2 Dowl. 247; 2 C. and M. 337; 4 Tyr. 281; 2 Dowl. 247; *Lang v. Webber*, 1 Price, 375.

^m *Redit v. Lucock*, 2 Dowl. 247; 2 C. and M. 337; 4 Tyr. 221.

ⁿ *Goodright dem. Balch v. Rich*, 7 T. R. 327; *Weak dem. Burge v. Caloway*, 7 Price, 531.

proceeding to trial, and want of countermand, or continuance in due time. The motion is "of course," but can only be made in term time. In the Courts of Queen's Bench and Common Pleas, the rule is absolute in the first instance; but in the Exchequer of Pleas, it is strictly *nisi*,ⁿ for four days in a town cause, and for six days in a country cause; it does not however stay the proceedings in the meantime;^o if cause is not shewn, it becomes by its own operation, and an affidavit of the service of the rule being filed with the master, absolute; if cause is intended to be shewn, two days' previous notice of doing so must be served upon the plaintiff's attorney; and the rule then becomes an ordinary "rule to shew cause;"^p and on a postponement of a cause in favour of the defendant, the plaintiff is entitled to his costs of the day.^q

[18.] The former observations as to the proceedings upon the part of the plaintiff preparatory to the trial, also apply for the main part to the defendant; and if the latter has in his possession, custody, or power, any document material to the plaintiff's case,^r and which he has a right to have stamped;^s and if upon application being made to him for the purpose, he consents at once to it, the costs of the attendance at the Stamp Office thereon by his attorney, are payable by the plaintiff.^t The entry of a *nolle prosequi*,^u either to the whole declaration,^v or to part only,^w or in cases *ex delicto*,^x as to one or more of a greater number of defendants; gives to the other side their costs thereon.

ⁿ *Robinson v. Robinson*, 3 Dowl. 177; Dax's Practice, 75.

^o *Eagar v. Cutthill*, 3 M. and W. 60; 6 Dowl. 125; *Gibbs v. Gales*, 7 Dowl. 325.

^p *Pope v. Fort*, Exch. Trin. Term, 1839, M.S.

^q *Walker v. Lane*, 3 Dowl. 504; 1 Gale, 52.

^r *Taylor v. Osborne*, 4 Taunt. 159.

^s *Bateman v. Phillips*, 4 Taunt. 157.

^t *Inman v. Hodgson*, 1 Y. and J. 28; *Browning v. Ayhwin*, 7 B. and C. 204.

^u 3 & 4 W. 4, c. 42, s. 33; 1 Saund. 207; *C. Bertram v. Gordon*, 6 Taunt. 444.

^v *Fleming v. Langton*, 1 Stra. 532; *Duberoy v. Johnson*, 7 T. R. 473; 9 D. & R. 801.

^w 3 & 4 W. 4, c. 42, s. 33; 1 Saund. 207 *c. in notis*; *Bowden v. Horn*, 7 Bing. 716.

^x *Bloomfield v. Blake*, 2 Dowl. 237; *Dale v. Eyre*, 1 Wils. 306; 3 & 4 W. 4, c. 42, s. 32.

Where after the issue in fact is delivered, the plaintiff obtains an order to amend it; the terms imposed, usually are upon "payment of costs."^y

[19.] Upon a demurrer being joined,^z the same rules which were before^a stated with respect to delivery of "points for argument"^b and "demurrer books"^c for the Judges, apply also as to the defendant. Where a demurrer is set down for argument, and the defendant afterwards becomes bankrupt, this is not any ground for striking it out of the special paper; even though the assignees refuse to give security for the costs;^d because this would prejudice the *jus tertii* in the lien of the defendant's attorney.^e At this stage of the pleadings, the plaintiff is not allowed to amend them,^f or to withdraw his demurrer, and deliver a replication,^g except on payment of costs; and a judgment for the defendant on demurrer, whether as to pleadings in abatement or in bar, entitles him to the costs thereon;^h provided it determines the action, or the defendant afterwards succeeds therein.ⁱ

[20.] Upon an issue of *nul tiel record* raised upon pleadings in abatement, there are not any costs;^k but they are allowed^l where such pleadings are in bar,^m *e. g.* setting out a record of a former recovery for the cause of action declared upon in a court of competent jurisdiction, upon a similar issue, and with a conclusive result;ⁿ on a special case stated for the opinion of the

^y *Atwill v. Baker*, 5 Dowl. 462; R. H. 4 W. 4, Schedule.

^z R. H. 4 W. 4.

^a p. 17.

^b R. H. 38 G. 3, *K. B.*; T. 11 G. 4, *C. P.*

^c R. H. 4 W. 4; *Darker v. Darker*, 2 Dowl. 18; *Parker v. Riley*, 3 M. and W. 230; *Gatliffe v. Bourne*, 5 Scott, 674.

^d *Flight v. Glossop*, 4 Dowl. 135; 1 Hodges, 222; *Young v. Rushworth*, 8 Ad. and Ell. 479, (n).

^e *Whittaker v. Mason*, 4 Bing. N. C. 303; 5 Scott, 740.

^f *Anon.* Loft. 155.

^g *Edmonds v. Walter*, 2 Chit. 291.

^h 3 & 4 W. 4, c. 42, s. 34.

ⁱ *Vallance v. Adams*, 2 Dowl. 118.

^k *Thomas v. Lloyd*, 1 Salk. 194; *Garland v. Extend*, *Id.*

^l 4 Jac. 1, c. 3; *Dawson v. Lee*, Cro. Car. 566.

^m 2 Sellon's Practice, 1—6.

ⁿ R. H. 4 W. 4, (8); *Behrens v. Pauli*, 1 Keen, 456; *Sieeking v. Behrens*, 2 Myl. and Cr. 581.

Court, under 3 & 4 W. 4, c. 42,^o the defendant obtaining the judgment thereon in his favour, has his costs.

[21.] Where an issue in fact is joined, it must be delivered: and must also be framed in conformity with the Rules of Court;^p but, if necessary, it may, under a Judge's order, be amended,^q on payment of the costs of the amendment^r and of the application;^s if it is irregular, and not amended, the defendant may have it set aside for irregularity, and with costs;^t where before any notice of trial is given by the plaintiff, he discontinues the action, there are not any costs allowed to the defendant for any briefs.^u

[22.] It is important to consider the effect of a plea on the part of a defendant, pleaded *quasi puis darrein continuance*.^v Such a plea is, under the New Rules as to Pleading;^w applicable to matter of defence arising either after the commencement of the action, and before^x plea; or after plea pleaded, and before the trial actually had;^y and where it is pleaded during the latter period, it must be accompanied by an affidavit^z as to such matter of the defence having arisen within eight days next before the time of pleading it. The defendant cannot, after pleading bankruptcy *puis darrein continuance*, compel the plaintiff to reply, and the latter may discontinue without payment of costs.^a If upon such a plea the defendant

^o s. 25; 1 Nev. and M. note; *Garland v. Jekyll*, 2 Bing. 330; *Gorbell v. Archer*, 5 Nev. and M. 523; 2 Ad. & El. 500.

^p R. H. 4 W. 4; *Swain v. Lewis*, 3 Dowl. 700.

^q R. H. 4 W. 4 (6).

^r *Walls v. Lyon*, 1 Dowl. 714; 2 M. and Scott, 579; 9 Bing. 411; *Rex v. York (Archbishop)*, 3 N. and M. 453; 1 A. and Ell. 394.

^s *Attwill v. Baker*, 5 Dowl. 462.

^t *Hart v. Dally*, 2 Dowl. 257; *Codrington v. Lloyd*, 1 P. and D. 157.

^u *Doe d. Postlethwaite v. Neale*, 6 Dowl. 166.

^v R. H. 4 W. 4 (2); *Barber v. Palmer*, 1 Salk. 178; 1 Ld. Raym. 693; 12 Mod. 539.

^w R. H. 4 W. 4 (r. 2, s. 2); *Powell v. Duncan*, 5 Dowl. 550; W. W. and D. 158.

^x *Dudden v. Triquet*, 4 M. and W. 676; 7 Dowl. 171.

^y *Bretherton v. Osborne*, 1 Dowl. 457.

^z *Willoughby v. Wilkins*, 2 Smith, 396; *Prince v. Nicholson*, 5 Taunt. 333; *Kibblewhite v. Reynolds*, 7 Scott, 232.

^a *Wollen v. Smith*, 1 P. and D. 375.

succeeds, and whether on an issue in law raised by a demurrer,^b or on an issue of *nul tiel record* thereon;^c or on an issue in fact arising therefrom;^d he is not entitled to any costs upon any of the proceedings previous to such plea;^e for it is viewed in practice as an abandonment by him of his former pleas.^f The costs which he is therefore entitled to are thus calculated, *e. g.* of the plea itself;^g of the affidavit verifying it;^h and, if pleaded at *nisi prius*, or upon a writ of trial being heard, of its engrossment upon the *nisi prius* record or writ;ⁱ of the subsequent pleadings, and also of the subsequent proceedings to, and of the final judgment.

[23.] If at the trial of the cause, the defendant demurs to any evidence^j offered there upon the part of the plaintiff; and this is allowed either at *nisi prius*^k or upon a writ of trial;^l the practice is that the trial is stayed.^m The proceedings, including this demurrer, are engrossed upon the *postea* or the writ; and if the defendant afterwards succeeds thereon, he gets all the costs thereof, and of all proceedings incidental thereto, as parcel of his "costs in the cause."ⁿ Upon a bill of exceptions^o tendered by him to the ruling of the judge at *nisi prius*,^p or of the presiding officer upon a writ of trial;^q he is, upon his succeeding upon the writ of error thereon, entitled

^b 3 & 4 W. 4. c. 42, s. 34.

^c Sellon's Practice, Vol. 2, Chap. xiii. "of Trial by Record."

^d *Beeton v. Forrest*, A. leyn, 66.

^e *Lyttleton v. Cross*, 4 B. and C. 117; 6 D. & R. 81; 3 B. and C. 317; 5 D. and R. 175.

^f *Barber v. Palmer*, 1 Ld. Raym. 693; 1 Salk. 178; 12 Mod. 539.

^g *Willoughby v. Wilkins*, 2 Smith, 396.

^h R. H. 4 W. 4 (2).

ⁱ *Capper v. Stewart*, 2 Tidd's Practice, 901, 903; *Myers v. Taylor*, 1 Ry. and M. 404; 2 C. and P. 306.

^j *Kanshaw v. Cocksedge*, 3 Bro. P. C. 690; 1 Dougl. 118; *Cort v. Birkbeck*, *Ib.* 218; *Miller v. Warre*, 1 C. and P. 237; *Newiss v. Lord*, Plowd. 411; Holt. 219, 1 And. 117, *pl.*

^k 2 Inst. 427; *Cort v. Bishop of St. David's*, Cro. Car. 34.

^l *Fitzharris v. Botun*, 1 Lev. 87; 1 Sid. 103, 105.

^m *Miller v. Warre*, 1 C. and P. 237; 4 B. and C. 538; 7 D. and R. 1.

ⁿ *Gibson v. Hunter*, 2 H. Bla. 208.

^o Stat. Westminster 2d, 13 Edw. 1, c. 31.

^p *Miller v. Warre*, *supra*

^q *Strother v. Hutchinson*, 4 Bing. N. C. 83; 6 Dowl. 238; *White v. Hislop*, 4 M. and W. 73; 6 Dowl. 693.

to his costs upon the bill of exceptions, of the proceedings thereon, and in error;^r but to those only;^s and the costs of settling a bill of exceptions are considered as costs in the Court of Error.^t

[24.] Upon a nonsuit of the nominal plaintiff in an action of ejectment, for any other^u reason than that of the defendant not appearing at the trial, and under the provisions of the consent rule, confessing "lease, entry, and ouster;"^v the defendant is entitled to the "general costs of the cause," and of all his pleadings, the proceedings in the cause, and of his witnesses.^w The general issue^x tenders a distinct issue as to each count; and his costs on the parts found for him, are deducted from the plaintiff's costs.^y The defendant is entitled to costs where there is a nonsuit of the plaintiff in any other^z action: in a penal^a action, or in a *scire facias*;^b and this right of the defendant is not altered; even though the plaintiff if he had succeeded in the action, would not have obtained any costs,^c or not more costs than the amount of the debt or damages.^d

[25.] Where the defendant obtains a verdict as to any part of the pleadings in his favour, he is, under the New

^r *Gardner v. Baillie*, 1 B. and P. 32; and see note ^t *post*.

^s *Bell v. Potts*, 5 East, 49; 2 Esp. 712; *Nowell v. Roake*, 7 B. and C. 404; 1 M. and R. 170.

^t *Doe d. Harvey v. Francis*, 7 Dowl. 193, 523; 5 M. and W. 273.

^u *Doe d. Prior v. Salter*, 3 Taunt. 485; Tidd's Appendix, Chap. XX, s. 39, &c.; *Fagg v. Roberts*, 2 Ventr. 195.

^v Adams on Ejectment, p. 323.

^w *Doe d. Capps v. Capps*, 4 Scott, 468; 3 Bing. N. C. 768 5 Dowl. 134.

^x *Cox v. Thomason*, 2 C. & J. 498; 1 Dowl. 572; 2 Tyr. 411.

^y *Knight v. Brown*, 2 M. and Scott, 797; 9 Bing. 643; 1 Dowl. 730; *Milner v. Graham*, 2 Dowl. 422.

^z 23 Hen. 8, c. 15; 4 Jac. 1, c. 3, s. 1; *Cameron v. Reynolds*, 1 Cowp. 407; *Davila v. Herring*, 1 Stra. 300. They are calculated, however, only on those issues upon which the plaintiff does not succeed; *Huntley v. Bulwer*, C. P. 18 Nov. 1839. MSS.

^a 18 Eliz. c. 5, s. 3; *Wilkinson v. Allott*, 1 Cowp. 366; Willes, 392, 440; *Law v. Worrall*, 1 Wils. 117.

^b *Bird v. Line*, 1 Com. 191.

^c *Wilkinson v. Allott*, 1 Cowp. 366; *Jeynes v. Stevenson*, Bull. Ni. Pri. 194.

^d Hutton, 16; Hob. 219.

Rules as to Pleading,* always entitled to some costs;^f and if the verdict so found, covers the entire claim of the plaintiff,^g and whether as in debt, for debt and damages;^h or as in other actions, for damages only;ⁱ he is entitled to his "general costs."^j Two most important instances in ordinary practice will illustrate this rule. 1. Where an executor or administrator, sued as such, pleads *non assumpsit* and also *plene administravit*; and succeeds upon an issue raised in respect of the latter plea,^k this entitles him to the general costs of the action. 2. The same principle applies in an action of replevin, where he succeeds upon any avowry,^l or cognizance,^m which answers the entire caseⁿ of the plaintiff as proved in evidence; so where there are two pleas, and sufficient of them is proved to make an aggregate equal to the plaintiff's demand.^o But the rule is otherwise and more limited, where the defendant succeeds partially,^p on issues raised by double pleadings;^q and this, whether by pleas^r to the declara-

* R. H. 2 W. 4 (74); H. 4 W. (7); *Cox v. Thomason*, 2 C. and J. 498; 1 Dowl. 572; 2 Tyr. 411.

^f 4 Jac. 1, c. 3; *Alsop v. Cleyden*, Cro. Eliz. 465; *Eyre v. Thorpe*, 6 Dowl. 768.

^g *Bennett v. Coster*, 4 J. B. Moore, 110; 1 B. and B. 465; *Vivian v. Blake*, 11 East, 263; *Vallance v. Adams*, 2 Dowl. 118; 1 C. & M. 856; 3 Tyr. 865; *Empson v. Fairfax*, 3 Nev. and Per. 385; *Iggulden v. Terson*, 2 Dowl. 277; 4 Tyr. 309.

^h *Holior v. Ebisson*, 10 Mod. 274.

ⁱ *Frankum v. Lord Falmouth*, 4 Dowl. 65; *Allenby v. Proudlock*, 5 Nev. and M. 636; *Staley v. Long*, 5 Dowl. 616; *Knight v. Woore*, 5 Dowl. 487; *Probert v. Phillips*, *Ib.* 473.

^j *Hogg v. Graham*, 4 Taunt. 135; *Ragg v. Wells*, 8 Taunt. 129.

^k *Iggulden v. Terson*, 2 Dowl. 277; 4 Tyr. 309.

^l 7 Hen. 8, c. 4; 21 Hen. 8, c. 19; *Samuel v. Hoder*, Cro. Jac. 520.

^m *James v. Turney*, Cro. Car. 497; *Ibid.* 532.

ⁿ *Spencer v. Hamerton*, 4 Add. and Ell. 413.

^o *Cousins v. Paddon*, 2 C. M. and R. 547; 4 Dowl. 488; 5 Tyr. 535; 1 Gale, 305.

^p *Doe v. Webber*, 1 H. and W. 10; 4 Nev. and M. 381; 2 Ad. & El. 448; *Radcliffe v. Hall*, 3 Dowl. 802; 1 Gale, 140; *Cox v. Thomason*, 1 Dowl. 572; *Knight v. Brown*, *Id.* 730.

^q R. H. 2 W. 4, (74); *Doe v. Eccrington*, 4 Dowl. 602; 1 H. & W. 502; *Daubuz v. Rickman*, 4 Dowl. 129; 1 Hodges, 75.

^r *Gosbell v. Archer*, 1 H. and W. 559; *Vollum v. Simpson*, 2 B. and P. 368; *Mullins v. Scott*, 5 Bing. N. C. 423.

tion ; by a replication ^a to a plea of set off ;^t or by pleas to a new assignment ;^u and in replevin, by avowries ^v or cognizances,^w or by pleas in bar thereto ;^x or upon issues ^y raised upon the *nisi prius* record, or writ of trial, where a variance arises ^z and the facts being specially ^a found by the jury ; judgment is afterwards given thereon against the defendant, and “ according to the very right and merits of the case ; ”^b or where part of a count is found for the defendant ;^c or a plea is found, under the New Rules as to pleadings, distributively,^d *e. g.* as to a right of way, to carry water and goods, if the plea of the defendant is found for him only, *i. e.* as to so much of the right claimed by him as relates to carrying goods.^e In these cases the allowance of costs to the defendant extends only to those expences which relate to the particular issues really found ;^f but it is sufficient if they substantially relate thereto ; and therefore the taxation is made *pro rata* as to such part of the pleadings and proceedings, and the de-

^a *Chappel v. Durston*, 1 C. and J. 1.

^t *Dowdland v. Thompson*, 2 W. Bla. 910 ; *Tuck v. Tuck*, 7 Dowl. 373.

^u *Broadbent v. Shaw*, 2 B. and Ad. 940 ; *House v. Thames Commissioners*, 3 B. and B. 117 ; 6 Moore, 324 ; *Vickers v. Gallimore*, 5 Bing. 196 ; 2 M. and P. 359 ; *Longden v. Bourn*, 1 B. and C. 278 ; *Forrester v. Dale*, 1 Dowl. 412.

^v 4 Anne, c. 16, s. 5 ; R. H. 2 W. 4, (74) ; *Cook v. Green*, 1 Marsh. 234 ; 5 Taunt. 594 ; *Spencer v. Hamerton*, 4 Ad. and Ell. 413.

^w *Marriott v. Shaw*, Com. 276 ; 1 Saund. 347, c.

^x 4 Anne, c. 16, s. 5 ; *Dodd v. Joddrell*, 2 T. R. 235.

^y *Eyre v. Thorpe*, 6 Dowl. 768.

^z 3 & 4 W. 4, c. 42, ss. 23, 24 ; *Serjeant v. Chaffey*, 5 Ad. and Ell. 354.

^a s. 24 ; *Guest v. Elwes*, 2 H. and W. 34 ; 5 Ad. and Ell. 118 ; 2 Nev. and Per. 230.

^b *Ibid.*
^c *Prudhomme v. Fraser*, 4 Nev. and M. 512 ; 2 Add. and Ell. 645 ; 1 Har. and W. 5 ; *Doe d. Smith v. Payne*, 4 Nev. and M. 381 ; 2 Ad. and Ell. 448 ; 1 Har. and W. 10 ; *Doe v. Errington*, 4 Dowl. 602 ; 1 Har. and Wol. 502.

^d R. H. 4 W. 4 ; *Ibid.* Trespass, (6). See as to the meaning of this word, *Higham v. Rabbit*, C. P. Trin. Term. 1839.

^e *Knight v. Woore*, 3 Bing. N. C. 534 ; 4 Scott, 360 ; 5 Dowl. 487 ; *Ib.* 201.

^f *Cartwright v. Cook*, 1 Dowl. 529 ; *Richards v. Cohen*, 1 Dowl. 533 ; *Eyre v. Thorpe*, 6 Dowl. 768,

defendant is entitled to a proportionate ^g allowance as to one of his witnesses, who gave at the trial material evidence as to the part so found. The costs allowed to the defendant as to such issues, are, if less than the plaintiff's "general costs of the cause" deducted thereout;^h and if as is sometimes the case, they amount to more,ⁱ the defendant is entitled to have judgment and execution in his favour as to such surplus costs. But where a plaintiff sues from the commencement of the action in *forma pauperis*, and succeeds upon one of several issues, the defendant is not entitled to costs of other issues found for him.^j There is an important distinction between issues in fact and in law. Where the defendant answers the whole ^k claim of the plaintiff, "upon the record," as it is termed; the former has a right to the general costs, and those of all issues "in fact" found for him; and whether on several^l pleas to the declaration; or in replevin,^m as to several avowries or cognizances, or pleas in bar thereto; or in cases where pleadings are taken and found distributively,ⁿ and he is also entitled to the costs upon all issues in law ^o which are decided by the court in his favour. But where the defendant does not ^p succeed as to the "general costs in the cause," he is not allowed, either by way of deduction or otherwise, any costs what-

^g *Lardner v. Dick*, 2 C. and M. 389; 4 Tyr. 239; 2 Dowl. 233; *Crowther v. Elwell*, 4 M. and W. 71; 6 Dowl. 697.

^h R. H. 2 W. 4, (74); *Leas v. Kendall*, 5 N. and M. 340; 1 H. and W. 316; *Milner v. Graham*, 2 Dowl. 422; *Starling v. Cozens*, 3 Dowl. 782; but not where the plaintiff sues in *forma pauperis*; *Gougenheim v. Lane*, 4 Dowl. 482; 1 M. and W. 136.

ⁱ *Brydges v. Fisher*, 1 Scott, 485; 1 Bing. N. C. 510; 1 Hodges, 36; *Twigg v. Potts*, 4 Dowl. 266.

^j *Foss v. Racine*, 4 M. and W. 610; 7 Dowl. 203; *Lovewell v. Curtis*, 5 M. and W. 158.

^k *Frankum v. Lord Falmouth*, 4 Dowl. 65; 1 H. and W. 337.

^l 4 Anne, c. 16, s. 4; *Gosbell v. Archer*, 1 H. and W. 559; and so on a reference before issue joined, *Daubuz v. Rickman*, 1 Scott, 564; 4 Dowl. 129; 1 Hodges, 75; 3 N. and P. 583.

^m s. 5; *Middleton v. Mucklow*, 10 Bing. 401.

ⁿ R. H. W. 4, (6); *Cox v. Thomason*, 1 Dowl. 572; *Knight v. Brown*, *Id.* 730; 2 M. and Scott, 797; 9 Bing. 643.

^o 3 & 4 W. 4, c. 42, s. 34.

^p *Cartwright v. Cook*, 1 Dowl. 529.

ever as to the issues in law.^q Where there are several counts, each applicable to the plaintiff's claim, he is entitled to take his verdict on one of them only; and a bill of exceptions would lie if the Judge directs the jury that all are proved.^r

[26.] The general liability of the plaintiff for the costs of the defendant upon a nonsuit, verdict, or judgment passing against the former, is not taken away or limited in any sense, because he sues as an executor^s or administrator, and though only for a cause of action which arose wholly^t in the lifetime of the testator or intestate, or because he sues as *prochein ami*, or guardian for an infant.

The former^u observations made as to the plaintiff, and with reference to the following subjects, apply equally, but *mutatis mutandis*, with respect to the defendant, *viz.* as to several pleas under R. H. 4 W. 4;^v notices to admit;^w notices under the acts of parliament as to the "infringement of a patent,"^x and "bankrupts:"^y and where a special jury is struck, upon the application of the defendant;^z he is, provided^a the Judge who tries the cause certifies as to the special jury,^b and there is a verdict for him,^c or a nonsuit had,^d entitled in taxing

^q *Astley v. Young*, 2 Burr. 1332; *Forbes v. King*, 3 Tyr. 385; *Forbes v. Gregory*, 1 C. and M. 435; 1 Dowl. 679; *Cartwright v. Cook*, *Ibid.* 529; *Farley v. Briant*, 5 Nev. and M. 58.

^r *Ward v. Bell*, 2 Dowl. 76; 1 C. & M. 848; 3 Tyr. 904.

^s 3 & 4 W. 4, c. 42, s. 31; *Spence v. Albert*, 4 Nev. and M. 385; 2 Ad. & Ell. 785; 1 H. and W. 7; *Ashton v. Poynter*, 3 Dowl. 465; 1 Gale, 57; 1 C. M. and R. 728; 5 Tyr. 322.

^t *Jones v. Jones*, 1 Bing. 249; 8 Moore, 146; *Dowbiggin v. Harrison*, 9 B. and C. 666; 4 M. and R. 622; *Jobson v. Forster*, 1 B. and Ad. 6; *Slater v. Lawson*, *Ibid.* 893.

^u pp. 19, 46.

^v s. 5; *Butler v. Hobson*, 6 Dowl. 409; *Mullins v. Scott*, 5 Bing. N. C. 423.

^w s. 20.
^x *Fisher v. Dewick*, 4 Bing. N. C. 707; 6 Dowl. 739; *Bulnois v. Mackenzie*, 4 Bing. N. C. 127; 5 Scott, 419; 6 Dowl. 215; 6 Scott, 58; *Losche v. Hague*, 7 Dowl. 495.

^y 6 Geo. 4, c. 16, s. 90.

^z Reg. Gen. 1 Vict. Hil. T.

^a 6 Geo. 4, c. 50, s. 34.

^b *Cursum v. Durham*, 2 Chit. 154; *Waggett v. Shaw*, 3 Campb. 316.

^c *Morison v. Harmer*, 5 Scott, 410.

^d 3 & 4 W. 4, c. 42, s. 35.

costs, to add his costs and expences of and in reference to such special jury.^d But where the record or writ of trial is withdrawn by the plaintiff, the defendant has not any right to these costs and expences, or any of them.^e Where a defendant acting under colour of 7 & 8 Geo. 4, c. 30,^f succeeds in the action, he is entitled to his costs between attorney and client;^g but where the act requires a certificate of the Judge, with a view to double costs, such certificate must be obtained.^h

[27.] It is material to notice three instances in which though a verdict is found for the plaintiff, the Judge who tried the cause has power over the costs: 1. Where in an action of trespass (other than for an assault and batteryⁱ alone,^j or for^k or concerning^l the freehold,^m or possessionⁿ of land)^o the debt^p or damages^q found by the jury are under 40s., the Judge (but not any presiding officer upon a writ of trial^r) may grant his certificate, and at any time before^s costs are finally taxed in the cause; that the debt or damages are under 40s., and it may be indorsed afterwards on the *postea*:^t in which event, (although a statute expressly^u awards full costs,) there are not any more costs

^d *Curran v. Durham*, 2 Chit. 154.

^e *Wood v. Grimwood*, 10 B. and C. 689.

^f p. 29.

^g *Wright v. Wales*, 3 M. and P. 96.

^h *Penney v. Slade*, 7 Dowl. 440; 5 Bing. N. C. 469; 7 Scott, 484.

ⁱ *Richardson v. Tomlin*, 1 East, 255; *Reece v. Lee*, 7 Moore, 269; *Wiffin v. Kincard*, 2 N. R. 471; *Bone v. Dawe*, 5 N. and M. 230; *Pursell v. Horne*, 3 N. and P. 564.

^k *Littlewood v. Wilkinson*, 9 Price, 314; *Walker v. Robinson*, 1 Wils. 93; 2 Stra. 1232. ^l *Booth v. Drake*, 6 Dowl. 564.

^m *Taylor v. Nicholls*, 3 B. and A. 443.

ⁿ *Purnell v. Young*, 3 M. and W. 288; 6 Dowl. 347; *Patrick v. Colerick*, 4 M. and W. 527; 7 Dowl. 201.

^o *Trotman v. Holder*, 1 B. and B. 222; *Wright v. Piggin*, 2 Y. and J. 544; *Thomas v. Davies*, 3 N. and P. 567; *Pugh v. Roberts*, 6 Dowl. 561. ^p *Tyler v. Bennett*, 5 Ad. & Ell. 377.

^q *Fogarty v. Smith*, 4 Dowl. 595; 1 H. and W. 644.

^r 43 Eliz. c. 6, s. 2; *Harris v. Duncan*, 2 Ad. and Ell. 158; 4 Nev. and M. 63.

^s *Jones v. Bond*, 5 Dowl. 455; 2 M. and W. 313; *Wardroper v. Richardson*, 1 Ad. and Ell. 75; 3 N. and M. 839; *Claridge v. Smith*, 4 Dowl. 583.

^t *Johnson v. Stanton*, 2 B. and C. 621; 4 D. and R. 156.

^u *Foxall v. Banks*, 5 B. and A. 536.

^v *Irwine v. Reddish*, 5 B. and Ad. 796; 1 D. and R. 413.

than the amount of the debt or damages so found; this, rule applies to the "general costs in the cause," and also to those on pleading issues merely;^s but the certificate having been actually granted by the Judge, cannot be annulled by him afterwards.^t The "power"^u as to granting it may be reviewed by the Court, but not the propriety;^v and even in an action against an attorney, such a certificate may be given.^w 2. In proceedings against a defendant for seizing any goods under the laws relating to the customs or excise, or against a justice on a conviction which is questioned; if the Judge who tries the cause, certifies that there was a probable cause for the seizure, or for such conviction, the plaintiff has not any costs.^x 3. Where the Judge certifies, upon one or more of several pleas being found against the defendant, that there was a probable cause for his pleading it.^y

[28.] There are four instances in which each of two or more co-defendants in an action, whether *ex delicto* or *ex contractu*, has his costs upon a verdict being found for him, and this though another co-defendant has suffered judgment by default to pass against himself.^z 1. Under the Metropolitan Police Act,^a and the Birmingham Paving Act,^b costs are unrestrictedly given to each defendant in

^s *Richmond v. Johnson*, 7 East, 583; *Simpson v. Hurdiss*, 2 M. and W. 84; 5 Dowl. 304.

^t *Anderson v. Sherwin*, 7 Car. and P. 527.

^u *Cann v. Facey*, 4 Ad. and Ell. 68; 5 Nev. and M. 405; 1 H. and W. 482.

^v *Bone v. Daise*, 5 Nev. and M. 230; 1 H. and W. 311; *Twigg v. Potts*, 4 Dowl. 266; *Smith v. Edwards*, 4 Dowl. 621; 1 Har. and W. 497.

^w *Wright v. Nuttall*, 10 B. and C. 492.

^x *Sullivan v. Montague*, 1 Dougl. 106; *Baldwin v. Tankard*, 1 H. Bla. 28; *Laugher v. Brevitt*, 5 B. and A. 762; *Rogers v. Jones*, 3 B. and C. 409; 5 D. and R. 268; R. and M. 129; 43 Geo. 3, c. 141.

^y *Robinson v. Messenger*, 3 Nev. and P. 583.

^z *Shrubbs v. Barrett*, 2 H. Bla. 28; *Price v. Harris*, 10 Bing. 557; 2 Dowl. 804; 4 M. and Scott, 474.

^a 10 Geo. 4, c. 44, s. 41; *Humphrey v. Woodhouse*, 1 Scott, 395; 1 Bing. N. C. 506; 3 Dowl. 416; 1 Hodges, 64.

^b 52 Geo. 3, c. cxiii, s. 93; *Hall v. Smith*, 2 Bing. 267; 9 J. B. Moore, 226.

such a case. 2. In other cases ^b *ex delicto*, unless the Judge certifies that there was "reasonable cause" for making the acquitted party a co-defendant. 3. Where in any action *ex contractu* and not being for unliquidated damages; there is a plea of the Statute of Limitations by the defendants,^c and the plaintiff is only enabled by his evidence to take his case out of the operation of the statute as to part of the defendants.^d 4. And where after a plea in abatement for non-joinder of a co-defendant,^e another action is brought against all the parties named in such a plea;^f and some one or more of the newly joined defendants are found not to be liable, such defendant has his costs on the issues found for him, and an aliquot, usually an half, part of the joint costs.^g But if all the business was virtually^h done by one attorney only, the defendant cannot, even though they in form defended separately and apparently by different attorneys, charge for more than one bill of costs; and a co-defendant, so found not guilty, or not so liable, is always required to satisfy the taxing officer, that he is not indemnified upon the part of any other defendant;ⁱ in such cases, there is only one taxation allowed.^j

[29.] The former^k remarks with reference to new trials, and applications of a similar nature, will, *mutatis mutandis*, apply here; and in addition, there are four applications necessary to comment upon as peculiarly applicable to a defendant. 1. Upon a motion to arrest^l

^b 3 & 4 W. 4, c. 42, s. 32.

^c 21 Jac. 1, c. 16, s. 6.

^d 9 Geo. 4, c. 14, s. 1; *Baylis v. Dyneley*, 2 Cbit. 153.

^e 2 Keb. pl. 48; *Skin.* 280.

^f 3 & 4 W. 4, c. 42, s. 10; *Griffiths v. Jones*, 4 Dowl. 159; 1 Gale, 254; 2 C. M. and R. 333; *Starling v. Cozens*, 1 Gale, 159; 3 Dowl. 782; 2 C. M. and R. 445; *Bartholomew v. Stevens*, 18 Leg. Ob. 448.

^g *Holroyd v. Breare*, 4 B. and A. 43, 700.

^h *Griffiths v. Jones*, 1 Gale, 254; 2 C. M. and R. 333, 445; *Gambrell v. Lord Falmouth*, 5 Ad. and Ell. 403.

ⁱ *Griffiths v. Kynaston*, 2 Tyr. 757.

^j *Dickins v. Jarvis*, 5 B. and C. 528; 8 D. and R. 285; *Smith v. Campbell*, 6 Bing. 637; 4 M. and P. 469.

^k p. 39; *Doe v. Edwards*, 7 Dowl. 547; *Corner v. Shaw*, 4 M. and W. 163, 28; 6 Dowl. 663, 688.

^l *Cameron v. Reynolds*, 1 Cowp. 407; *Brook v. Finch*, 6 Dowl. 313; *Thomas v. Jones*, 6 Dowl. 663; 4 Mee. and W. 28.

or to vacate^m and arrest a judgment, and to set aside execution, there are not any costs given;ⁿ but if any costs in the action have been levied as against the defendant, the Court will, upon making the above rule absolute, order the restoration^o of such costs.

Where the plaintiff, after a rule ordered for a new trial, without mentioning costs, discontinues; but there are not any costs on the former trial.^p

[30.] 2. Where the defendant has, under a Judge's order,^q been arrested;^r and the plaintiff recovers by the judgment,^s for his debt and damages,^t or for his damages,^u as the case may be, less than 20l.,^v or even less than the amount for which the arrest was made;^w the defendant may apply to the Court in which the action is, and by affidavit^x shewing an absence of "reasonable cause" for such arrest with respect to the amount,^y and also for believing that he was about to abscond^z to deprive the plaintiff of his costs; and to award to the defendant his costs of the defence, and of the application. The general course is, for the Court to grant this motion, in cases where, from the fact of the contract having been made between the parties, and when alone, the plaintiff must have been aware of his want of legal evidence to support it.^a But it is not allowed where the defendant

^m 1 W. 4, c. 7, s. 4; 3 & 4 W. 4, c. 42, s. 19.

ⁿ *Hayter v. Moat*, 2 M. and W. 56; 5 Dowl. 329; note ^k *supra*. ^o *Morton v. Burn*, 5 Dowl. 421.

^p *Jolliffe v. Mundy*, 4 M. and W. 502; 7 Dowl. 225.

^q 1 & 2 Vict. c. 110, s. 3; *James v. Askeu*, 3 Nev. and P. 495; 8 Ad. and Ell. 351; *Reynolds v. Matthews*, 7 Dowl. 580.

^r *Ibid.*; *Robinson v. Powell*, Exch. 1839. (MSS.)

^s *Holder v. Raith*, 2 Ad. and Ell. 445; 4 Nev. and M. 446; 1 H. and W. 8; *Lewis v. Ashton*, 1 M. and W. 493.

^t See the principle of law as to this in *Cammack v. Gregory*, 10 East, 525; *Talbot v. Hodson*, 2 Marsh, 257.

^u *Tipton v. Gardner*, 4 Ad. and Ell. 317.

^v 1 & 2 Vict. c. 110, s. 3.

^w 43 G. 3, c. 46, s. 3; *Bates v. Pilling*, 4 Tyr. 231; 2 C. M. and R. 374; 2 Dowl. 367; *Holder v. Raith*, *supra*.

^x *Twiss v. Osborne*, 4 Dowl. 107; 1 H. and W. 274.

^y *Reynolds v. Matthews*, 7 Dowl. 580; *Clare v. Cooke*, 4 Bing. N. C. 269; 5 Scott, 698; *Day v. Clarke*, 7 Dowl. 147; 5 Bing. N. C. 117; 6 Scott, 886.

^z *Bateman v. Dunn*, 5 Bing. N. C. 49; 7 Dowl. 105.

^a *Robinson v. Whitehead*, 6 Dowl. 292; 4 N. & M. 882.

pleads a plea of payment into Court and the plaintiff accepts the amount in satisfaction and discharge;^a where the defendant, having peculiar means of knowing the state of the accounts, has misled the plaintiff;^b or where the defendant, having often promised, though by word of mouth only, payment of the debt, pleads the Statute of Limitations;^c nor where the holder of a bill of exchange has given some value for it, and was not aware of there being any deficiency of value, as between the defendant and the prior parties.^d The statute requires proof^e by affidavit;^f but it does not exclude reference to the notes of the Judge who tried the cause.^g The verdict of the jury is viewed as *prima facie*,^h though not conclusive,ⁱ evidence as to the want of "probable cause;" and in order to bring the case within the provisions of the statute, there must have been an arrest,^j and a holding,^k to give special^l bail, *e. g.* when the defendant, being arrested, goes to the county gaol,^m or he is discharged out of custody upon the ground of a defect in the affidavit to hold to bail,ⁿ or for any other reason;^o and this appli-

^a *Rowe v. Rhodes*, 4 Tyr. 216; 2 C. M. and R. 379; 2 Dowl. 384; *Brooks v. Rigby*, 2 Ad. and Ell. 21; 4 Nev. and M. 3.

^b *Day v. Clarke*, 5 Bing. N. C. 117; 7 Dowl. 147; 6 Scott, 886.

^c *White v. Pritchett*, 4 Bing. N. C. 237; 6 Dowl. 445; 5 Scott, 610.

^d *Edwards v. Jones*, 2 M. and W. 414; 5 Dowl. 585.

^e *Donlan v. Brett*, 10 B. and C. 117, 120; 5 M. and R. 29, 31; *Erle v. Wynne*, 1 C. and M. 532; 3 Tyr. 586; 2 Dowl. 23.

^f *Linthwaite v. Bellings*, 2 Smith, 667; *Twiss v. Osborne*, 4 Dowl. 107; 1 H. and W. 274, (n.); *Ballantine v. Taylor*, 1 N. and P. 219.

^g *Fountain v. Young*, 1 Taunt. 60; *Van Neuvel v. Hunter*, 1 H. and W. 273.

^h *Tipton v. Gardner*, 4 Ad. and Ell. 317.

ⁱ *Roper v. Sheveley*, 2 Dowl. 14.

^j *Gruinger v. Hill*, 4 Bing. N. C. 212; 5 Scott, 561; *James v. Ashew*, 3 Nev. and P. 495; *Robinson v. Powell*, Exch. 6 Nov. 1839. (MSS.)

^k *Edwards v. Jones*, 2 Mee. and W. 414; 5 Dowl. 585.

^l *Berry v. Adamson*, 6 B. and C. 528; 9 D. and R. 553; 2 C. and P. 503; *Amor v. Blofield*, 1 Dowl. 277; 9 Bing. 91.

^m *Preedy v. M'Farlane*, 1 C. M. and R. 819; 3 Dowl. 458; 5 Tyr. 355; 1 Gale, 20; *Reynolds v. Matthews* 7 Dowl. 580.

ⁿ *Edwards v. Jones*, 6 Dowl. 585; 2 M. and W. 414

^o *Boddington v. Woodloy*, 1 P. and D. 159

cation must always be made promptly,^p for it is not merely sufficient that it is made before final judgment is signed.

[31.] 3. Where a statute relating to a Court of Requests, enacts, that in actions brought in the Courts of Law at Westminster, for a sum of money recoverable there, the plaintiff shall not have any costs,^q or that the defendant shall have his costs,^r this remedy applies to the costs only,^s and not as any bar to the claim.^t The mode of taking advantage of such a statutable provision, is by a suggestion^u after verdict; and in such a case an application should be made immediately after the trial to a judge at chambers,^v to make an order for a stay of proceedings during the vacation: but whether this latter application is granted or not, the Court may be moved within the four first sitting days of the next term^w to make such an entry; and where proceedings have been taken in the meantime,^x the form of the motion will be to vacate the judgment, and set aside the execution; and in all cases it should be made promptly, and upon an affidavit;^y the record or writ of trial should then be produced,^z and if possible,^a before^b final judgment is signed. The act which relates to the County

^p *Hippesley v. Laying*, 7 D. and R. 265; 4 B. and C. 863; *Watchorn v. Cook*, 2 M. and S. 348; *Doe v. Edwards*, 7 Dowl. 547.

^q *Barney v. Tubb*, 2 H. Bl. 350; *Sandall v. Bennett*, 3 Dowl. 294; *King v. Myers*, 5 Dowl. 686.

^r e. g. The Middlesex County Court act, 23 G. 2, c. 33; and see Tidd Pratt's Acts relative to Courts of Request.

^s *Fitzpatrick v. Pickering*, 2 Wils. 68; *Barnes*, 470; *King v. Myers*, 5 Dowl. 686.

^t *Barney v. Tubb*, 2 H. Bl. 350; *Sandell v. Bennett*, 3 Dowl. 294; *Jackman v. Cother*, 5 M. and W. 147.

^u *Heale v. Earle*, 2 M. and W. 383; *Clark v. Hamlet*, 1 Harr. and W. 177. ^v *King v. Erle*, 5 Dowl. 595.

^w *Baddeley v. Oliver*, 1 Dowl. 598; 3 Tyr. 145; *Bond v. Bailey*, 2 C. M. and R. 246; 3 Dowl. 808.

^x 1 W. 4, c. 7, s. 4; 3 & 4 W. 4, c. 42, s. 19; *Johnson v. Feal*, 7 Dowl. 487; 5 M. and W. 276.

^y *Bishop v. Marsh*, C. P. 4 Nov. 1839; *White v. Seffert*, 5 Scott, 744. ^z *Jones v. Harris*, 1 Dowl. 433.

^a *Johnson v. Feal*, *supra*.

^b *Barney v. Tubb*, and *Watchorn v. Cook*, *supra*.; *Calvert v. Everard*, 5 M. and S. 510; *Unwin v. King*, 2 Dowl. 593.

Court of Middlesex,^b takes away the plaintiff's costs; and awards double costs to the defendant;^c but its provisions do not apply to an attorney when suing as a plaintiff,^d or being sued as a defendant.^e The defendant must, at the commencement of the action, have been resident within the county,^f although the plaintiff need not;^g and it is also necessary that the cause of action should have arisen there.^h In such cases it applies, though the amount of the plaintiff's demand is reduced by a point of law merely,ⁱ and also to cases tried upon a writ of trial.^j Under the acts relating to the Tower Hamlets,^k and the hundred of West Brixton,^l the course is, to apply to deprive the plaintiff of his costs; and the place of his residence is not^m material. Under the Blackheath Actⁿ the defendant is entitled to his costs;^o and so also under that for the city of Westminster;^p but in this latter case there must be a plea in bar^q as to the jurisdiction.

[32.] 4. In an action of "waste,"^r or in an action "on

^b 23 G. 2, c. 33; *Mansel on County Courts*. ^c s. 19.

^d *Johnson v. Bray*, 2 B. and B. 698; 5 J. B. Moore, 622; *Dyer v. Levi*, 1 H. and W. 640; 4 Dowl. 630; *Wright v. Skinner*, 1 Gale, 378; 4 Dowl. 745; 1 M. and W. 144.

^e *Gardner v. Jessop*, 2 Wils. 42; *Wiltshire v. Lloyd*, 1 Dougl. 381; *Percival v. Cook*, 7 Dowl. 500; 5 M. and W. 293.

^f *Crowder v. Bell*, 2 Dowl. 508.

^g *Pritchard v. Mc Gill*, 2 M. and W. 380; 5 Dowl. 731.

^h *Mc Collam v. Carr*, 1 B. and P. 223.

ⁱ *Shaddick v. Bennett*, 7 D. and R. 229; 4 B. and C. 769; *Wells v. Langridge*, 5 Dowl. 509; *Cross v. Collins*, 5 Bing. N. C. 194.

^j *Bailey v. Chitty*, 2 M. and W. 28; 5 Dowl. 307.

^k 2 W. 4, c. lxxv.

^l 31 G. 3, c. 23; and 46 G. 3, c. clxxxviii.

^m *Hamley v. Hutton*, 5 Dowl. 332; *Green v. Bolton*, 4 Bing. N. C. 308; 6 Dowl. 434; 5 Scott, 746.

ⁿ 6 & 7 W. 4, c. 120.

^o *Burton v. Campbell*, 6 Dowl. 451; 5 Scott, 582; *Pope v. Banyard*, 3 M. and W. 424; 6 Dowl. 571; *Cross v. Collins*, 5 Bing. N. C. 194.

^p *Warne v. Beresford*, 6 Dowl. 157; 2 M. and W. 848; *White v. Seffert*, 5 Scott, 744.

^q *Taylor v. Blair*, 3 T. R. 452.

^r Bro. Abr. tit. Waste, pl. 123; Co. Litt. 54; Finch's Law, lib. 1, c. 3, s. 34; *Harrow School v. Alderton*, 2 B. and P. 86.

the case”^u for an injury to the reversionary interest; if the damages found by the jury at the trial of the cause, or upon a writ of inquiry, are under “three shillings and four pence,”^t the defendant is, “notwithstanding this finding,” entitled to the judgment of the Court in his favour.

[33.] There are certain cases in which, by the enactments of particular acts of parliament, double, and even treble costs, are to be awarded to a defendant, provided he succeeds in the action; and though even upon pleading issues merely; and wherever double or treble damages,^u are given by any statute, double and treble costs follow thereon, and as of course, and are calculated upon the costs of increase.^v *e. g.* Where in replevin, in the case of a distress for rent, an heriot, relief or other service, as for the avowant, or cognizant, upon a nonsuit,^w discontinuance,^x or verdict, the costs are “double;” but upon a “*non pros*” and in other cases of replevin, they are single only. Parish officers, when sued for acts done as to poor rates,^z are, where there is a nonsuit^a or other judgment in their favour, entitled to treble costs. These increased scales apply also to special pleas,^b even, although by some particular act, all special defences are made available under the general issue;^c and even where there is a discontinuance,^d and though the act of the defendant has misled the plaintiff, as to his proper remedy;^e but it does not apply to issues raised as to matters not done under colour of the act or

^u Gibbon's on Dilapidations and Nuisances, 98.

^t *Young v. Spencer*, 10 B. and C. 145; 5 M. and R. 47.

^u *Deacon v. Morris*, 2 B. and A. 393.

^v *Smith v. Dunge*, 2 Stra. 1048; *Stanniland v. Ludlam*, 4 B. and C. 889; 7 D. and R. 484; *Hullock on Costs*, 484.

^w 7 Hen. 8, c. 4, s. 3; 21 Hen. 8, c. 19, s. 3; 4 Jac. 1, c. 3; 17 Car. 2, c. 7, s. 2; 11 G. 2, c. 19, s. 22; *Gurney v. Buller*, 1 B. and A. 670; *Johnson v. Lawson*, 2 Bing. 341.

^x *Wilkinson on Replevin*, p. 103; *Gurney v. Buller*, 1 B. and A. 670.

^z 13 & 14 Car. 2, c. 12, s. 29; *Charrington v. Meatheringham*, 2 Mee. and W. 288; 5 Dowl. 313.

^a *Ibid.*

^b *Gambrell v. Lord Falmouth*, 5 Ad. and El. 403.

^c 3 & 4 W. 4, c. 42, s. 1; R. H. 4 W. 4, Trin. 1 Vict.

^d *Stiles v. Sir R. Cox*, Vaugh. 117.

^e *Debney v. Corbett*, 5 Dowl. 704.

to extraneous matters,^f *e. g.* a motion to change the venue because an impartial trial cannot be had. The rule, where it applies, does so as to one or more of several co-defendants who are acquitted.^g These costs are thus calculated : double—the single costs of increase, and also half of them in addition :^h treble—the like, and also half of the former half so added ;ⁱ but this is only done as to the ordinary costs in the cause.^j Where there is a *non pros*, nonsuit, or a judgment as in case of a nonsuit, a judge, on an affidavit of the facts, will order the entry upon the record or writ of trial of a suggestion as to these costs.^k Upon a verdict, the judge who tries the cause will, if the act requires it, grant his certificate.^l A justice must obtain this certificate as a condition precedent to his demand for double costs under the 7 Jac. 1, c. 5;^m but where the act does not so require, these costs may be taxed as if they were single costs only :ⁿ and by statutable enactments as to the metropolitan police,^o and as to poor rates,^p these costs are to be taxed as between “attorney and client.”

[34.] In taxing costs, the defendant, if they are of the “general costs in the cause,”^q is bound to serve a notice of taxing upon the plaintiff’s attorney ;^r and the remarks before made^s with reference to the taxation by

^f *Thomas v. Saunders*, 1 Ad. and Ell. 552 ; 3 N. and M. 572 ; *Wilson v. River Dun Comp.* 7 Dowl. 369 ; 5 M. and W. 89.

^g *Hall v. Smith*, 2 Bing. 267 ; 9 Moore, 226.

^h *Smith v. Dunce*, 2 Stra. 1048 ; *Stanniland v. Ludlam*, 7 D. and R. 484 ; 4 B. and C. 889 ; 1 Chit. Rep. 137 a, 139, 141 a.

ⁱ *Hullock on Costs*, 484.

^j *Kenp v. Richardson*, 2 J. B. Moore, 238 ; *Thomas v. Saunders*, 3 Nev. and M. 572 ; 1 Ad. and Ell. 552 ; and proceedings consequent thereon, as in case of error brought. *Francis v. Doe*, 7 Dowl. 523 ; 5 M. and W. 273.

^k *Collins v. Poney*, 9 East, 332.

^l *Harper v. Carr*, 7 T. R. 448 ; *Grindley v. Holloway*, 1 Dougl. 307.

^m *Penny v. Slade*, 5 Bing. N. C. 469.

ⁿ *Wells v. Ody*, 3 Dowl. 799 ; 1 Gale, 161 ; *Fosbrooke v. Hall*, 1 Mee. and W. 205 ; 4 Dowl. 701.

^o 10 G. 4, c. 44 ; 1 & 2 W. 4, c. 41.

^p 4 & 5 W. 4, c. 76, s. 104.

^q *Staley v. Long*, 5 Dowl. 616 ; *Allenby v. Proudlock*, 5 N. and M. 636.

^r R. T. 1 W. 4 (12) ; R. H. 4 W. 4 (92) ; *Edmunds v. Cates*, 4 M. & W. 66 ; 6 Dowl. 667.

^s p. 49.

a plaintiff, for the most part also apply here; and where the bill of costs is merely as to pleading issues, it is made out accordingly, and limited thereto.^t

[35.] Upon formal amendments made by the plaintiff, as of a *similiter*, (though after a writ of error brought), the defendant has his costs thereon.^u

[36.] Where a judgment for the plaintiff is reversed upon a writ of error *coram nobis or vobis*, and for an error in fact; the plaintiff in the error cause is not entitled to any costs in error, but only to his costs in the original action.^v

[37.] On the judgment being wholly satisfied as to the debt and costs, satisfaction may be entered upon the judgment roll:^w and when required, the plaintiff may be ruled to enter his judgment.^x

^t *Hart v. Cutbush*, 2 Dowl. 456; *Spencer v. Hamerton*, 5 M. and M. 22; 1 H. and W. 700; but the defendant is entitled to the costs of all issues found for him, though they exceed those of the plaintiff; *Milner v. Graham*, 2 Dowl. 422; *Newton v. Harland*, 6 Dowl. 644.

^u *Siboni v. Kirkman*, 3 M. and W. 48; 6 Dowl. 98.

^v *Anon.* 2 Tidd's Practice, 1244.

^w *De Bastos v. Willmott*, 1 Hodges, 15.

^x *Engler v. Twisden*, 4 Bing. N. C. 714; 6 Scott, 580.

CHAP. IV.

Incidental Proceedings.

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| <ol style="list-style-type: none"> 1. Arbitration. 2. Attorney's Bill of Costs. Delivery. 3. Power of Taxing. 4. Course of Proceeding. 5. Costs of Taxation. 6. Lien of Attorney. 7. Town Agent. 8. General Regulations: Exceptions. 9. Authority of Attorney. 10. Order of Judge at Nisi Prius: Rule of Court. 11. Notice of Motion. | <ol style="list-style-type: none"> 12. Moving for Rule. 13. Shewing Cause 14. Applications under Interpleader Act. 15. Rules of Court, generally. 16. Attachment: Sequestration: Distringas. 17. Rule for payment of Money or Costs: Entry of, in Common Pleas Office. 18. Prohibition. 19. <i>Mandamus</i>. 20. Information in nature of a <i>Quo Warranto</i>. |
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[1.] Where a matter is referred to an arbitrator, if there is any authority given to him over the costs,^a he may make an award as to the whole, or as to part of them only;^b and where there is a cause in Court,^c he has, even without such authority, the like power. "Costs" generally, do not include those of the reference;^d but "costs to abide the event," include those of the cause^e and of the reference, and as fixed by the taxing officer.^f Where the terms of the reference are, that the costs of the cause shall abide the event of the award, the master will tax the costs on all the issues in favour of the plaintiff, if it sufficiently appear on the face of the award that there is a finding for him on all the counts &c And on similar terms of reference, if some issues are found for the plaintiff, and others for the de-

^a *Candler v. Fuller*, Willes, 62; *Murde v. Cox*, 1 Cowp. 127; *Barker v. Tibson*, 2 W. Bla. 953.

^b *Reeves v. M'Gregor*, 1 P. and D. 372.

^c *Roe d. Wood v. Doe*, 2 T. R. 644; *Whitehead v. Firth*, 12 East, 165; *Kendrick v. Davies*, 5 Dowl. 693.

^d *Bradley v. Tunstow*, 1 B. and P. 34; *Strutt v. Rogers*, 7 Taunt. 213; *Rex v. Moate*, 3 B. and Ad. 237; *Taylor v. Gordon*, 9 Bing. 570; 2 M. and Scott, 725; 1 Dowl. 720.

^e *Jones v. Powell*, 6 Dowl. 483; *Duckworth v. Harrison*, 4 M. and W. 432; 7 Dowl. 71; *Brass v. Marples and another*, Exch. Hil. T. 1839; *Wood v. O'Kelly*, 9 East, 436.

^f *Kendrick v. Davies*, *suprà*.

^g *Rennie v. Mills*, 7 Dowl. 295; 5 Bing. N. C. 249; 7 Scott, 276; *Reeves v. M'Gregor*, 1 P. & D. 372.

fendant; the award will be invalidated, by the arbitrator adjudicating that either party shall be entitled to the whole of the costs.^h "Costs of the reference,"ⁱ are only under the controul of the arbitrator by an express authority being given to him over them; and this, whether an action be pending or not. "Costs of the award,"^j or of the certificate, are, if not expressly provided for, as where they are to abide the "event of the award,"^k borne rateably amongst the parties.^l If a motion to set aside an award be made out of the time limited for that purpose,^m or the rule thereon be discharged, the party successfully shewing cause against it has his costs;ⁿ and where an order of reference directs that the party in whose favour the award shall be made, shall be at liberty to sign judgment "for the amount payable thereunder," and tax his costs, issue execution, &c.; if the award is in favour of the defendant, he may sign final judgment for his costs when taxed;^o where the reference is made solely for the benefit of the unsuccessful party, the costs of the reference are always costs in the cause.^p If the award is set aside, the cause having been referred at *Nisi Prius*, and a second trial is had, the party who is successful on the second trial, is not entitled to the costs of the first trial.^q

[2.] It is not competent for an attorney who has not been enrolled in the Court, to sue for any fees or disbursements therein.^r The power of the Courts to order an

^h *Hetherington v. Robinson*, 4 M. and W. 608; 7 Dowl. 192.

ⁱ *Strutt v. Rogers*, 7 Taunt. 213; 2 Marsh. 524; *Taylor v. Gordon*, 2 M. and Scott, 725; 9 Bing. 570; 1 Dowl. 720.

^j *Hicks v. Richardson*, 1 B. and P. 93; *Stokes v. Lewis*, 2 Smith, 12; *Burroughes v. Clarke*, 1 Dowl. 48.

^k *Wood v. O'Kelly*, 9 East, 436.

^l *Grove v. Cox*, 1 Taunt. 165; *Taylor v. Gordon*, *supra*.

^m *Reynolds v. Askew*, 5 Dowl. 682.

ⁿ *Worrall v. Deane*, 2 Dowl. 261; *Anon.*, Hullock on Costs, 431.

^o *Maggs v. Yorston*, 6 Dowl. 481.

^p *Tregoning v. Attenborough*, 1 Dowl. 225; 5 M. and P. 453; 7 Bing. 733.

^q *Wood v. Duncan*, 7 Dowl. 344; *Doe d. Davies v. Morgan*, 4 M. and W. 171.

^r *Humphrys v. Henry*, 2 Dowl. 827; 4 M. and Scott, 500; 1 Bing. N. C. 62, 65; *Percival v. Cook*, 7 Dowl. 501.

attorney to deliver his bill of costs to his client,^s extends to all cases, and is inherent in them, at common law.^t

[3.] Their authority to order a bill of costs to be taxed, except where a question of lien is affected, is wholly^u derived from the provisions of the statute 2 Geo. 2, c. 23,^v and extends to "fees, charges, and disbursements," at law and in equity;^w this term "at law," includes business done at the Central Criminal Court;^x but it does not^y extend to the bills of costs of agents,^z or to a "search for, and advising as to reviving an old warrant of attorney;"^a or "preparing the acknowledgment of a married woman,"^b under 3 & 4 W. 4, c. 74;^c or to the service of subpoenas for witnesses.^d The application must be made, for, and on the behalf of, the client,^e and during the life of the attorney,^{eo} it is not barred by even a lapse of seven years after it was incurred,^f but will not be granted after an entire payment,^g or security given for a settled balance,^h unless a case of fraud,ⁱ or gross extortion or oppression^j can be

^s *Anon.* Comb. 43, 337; 12 Mod. 516, 554; *Clarke v. Stone*, 1 Barnes, 28; *Ellison v. Kirby*, Ca. Prac. C. P. 60; *In the matter of Rice*, 2 Keen, 181; *Painter v. Thomas*, C. P. Hil. 1840. (MSS.)

^t *Clarkson v. Parker*, 4 M. and W. 532; 7 Dowl. 87; *Ex parte Aitkin*, 4 B. and A. 47.

^u *Dagley v. Kentish*, 1 Dowl. 330; *Clutterbuck v. Combes*, 5 B. and Ad. 400; *Ex parte Bowles*, 1 Hodges, 143; 1 Bing. N. C. 632; *Howard v. Groom*, 4 Dowl. 21; *Doe v. Roe*, *Id.* 95,

^v s. 23. ^w *In re Branson*, 4 Scott, 539; *Rex v. Price*, *Id.* 416.

^x *Curling v. Sedger*, 4 Bing. N. C. 743; 6 Dowl. 759; 6 Scott, 678. ^y 12 G. 2, c. 13, s. 6.

^z *Weymouth v. Knipe*, 5 Dowl. 495; 3 Bing. N. C. 387; 3 Scott, 764; *Hill v. Wright*, 5 Scott, 662.

^a *Rex v. Price*, 4 Scott, 416.

^b *Re Branstons*, 3 Bing. N. C. 783; 5 Dowl. 623; 4 Scott, 539. ^c s. 79. ^d *Presidder v. Smith*; Q. B. 1838, MSS.

^e *Doe d. Palmer v. Roe*, 4 Dowl. 95; 1 H. and W. 339; *Doe dem. Selwood v. Barnes*, Q. B. 1838, MSS.

^{eo} *Maddesford v. Anstwick*, 3 Myl. and Cr. 423.

^f *Ex parte Sharpe*, 5 Dowl. 777.

^g *Ex parte Yateman*, 4 Dowl. 304; 1 H. and W. 510.

^h *Manning v. Brown*, 3 Dowl. 31; *Gregg v. Taylor*, 1 Beav. 123. ⁱ *Ex parte Shipden*, 6 D. and R. 338.

^j *Johnes v. Lloyd*, 10 Price, 62; *Wilkinson v. Forster*, 7 J. B. Moore, 496.

made out. In a late case,^k the Court ordered a bill of costs to be taxed under very special circumstances; several parties had agreed to share with the plaintiff the costs of an action, he paid his attorney's bill of costs, and then sued the others for contribution; a taxation was ordered, although the bill had been paid, and the defendant who applied for such taxation, had paid his full share of the contribution into Court.

[4.] The first proceeding with a view to taxation, is for the client to demand in writing from the attorney, a signed bill;^l if refused, a judge upon a summons will order it to be delivered,^m but its correctness cannot be impeached by treating it as a nullity, and proceeding to an attachment;ⁿ and where the client disputes the retainer, or liability, the proper course for him is to resist the demand,^o and not attempt to tax the bill.^p On an order being made for the taxation, it is the invariable practice^q for the client to undertake in the order, to pay the amount which shall be found due;^r and where there are two or more joint clients, one^s or more of them must so undertake. The attorney should always take care to have this undertaking given, and also so inserted, for if it is omitted, his only remedy for the costs, as taxed upon the *allocatur*, is by an action;^t in which case the proceedings and the *allocatur* will be good evidence under the account stated:^u and where the attorney seeks to recover interest upon any part of his claim,^v it is necessary to have it expressly provided for in the order.^w If any delay takes place upon the part of the client, in proceeding with

^k *Grover v. Heath*, 2 Dowl. 285.

^l 3 Jac. 1, c. 7, s. 1; *Vincent v. Slaymaker*, 12 East, 372.

^m *Bassett v. Giblet*, 2 Dowl. 650.

ⁿ *Ex parte Lawrence*, 2 Dowl. 230.

^o *Hoby and another v. Pritchard*, 5 Dowl. 301; 2 Mee. and W. 124.

^p *Jones v. Roberts*, 2 Dowl. 656.

^q *Ex parte Ward*, 1 H. and W. 212; *Ryalls v. Emerson*, 2 Dowl. 357.

^r 2 G. 2, c. 23, s. 23.

^s *Hoby v. Pritchard*, *supra*.

^t *Ryalls v. Emerson*, 2 Dowl. 357; *Price v. Philcox*, 7 Dowl. 559.

^u *Keen v. Batshore*, 1 Esp. 194; *Lee v. Jones*, 2 Camp. 496.

^v 3 & 4 W. 4, c. 42, s. 28.

^w *Berrington v. Phillips*, 4 Dowl. 758; 1 M. and W. 48.

the taxation, the attorney should himself proceed thereon *ex parte*.^x

Provided the client signs the undertaking required by the statute,^y all proceedings, whether at law or in equity, and actually commenced, or only contemplated,^z are pending the reference to the master, stayed.^a In taxing, the officer is controlled by, and cannot tax in favour of, the attorney, more than the gross amount of his bill of costs;^b and he has not any power to inquire whether any part of such bill was agreed to be done for "costs out of pocket only."^c

[6.] Where, with a view to such a reference, the attorney and client both agree to waive the delivery of a signed bill of costs, the regulations of the statute 2 G. 2, c. 23,^d are (unless expressly otherwise provided for,) also waived.^e The attorney is not allowed to affect, with reference to the costs of taxation, the "more than one-sixth" taken off from his bill;^f where it consists of an item being debt and costs received from his client, to pay over to the plaintiff's attorney; for in such a case, his duty was merely to convey the money from one party to the other.^g Upon a sixth^h being taken off the bill, the attorney usually has to pay the costs of the taxation;ⁱ but not if the order was obtained on an application made after an action brought to recover the amount;^j but if less is deducted, they are in the discretion of the Court or a judge;^k these costs should be applied for immediately

^x *Sheriff v. Gressley*, 4 Ad. and Ell. 338; 5 Nev. and M. 491; *Sadler v. Robins*, 1 Campb. 253.

^y *Williams v. Roberts*, 3 Dowl. 512; 5 Tyr. 421; 1 Gale, 56.

^z *Hewitt v. Bellott*, 2 B. & A. 745. ^a 2 G. 2, c. 23, s. 23.

^b *Tidd's Practice*, vol. ii, p. 1026; *Drew v. Clifford*, 1 Ry. and M. 288; 2 C. and P. 69.

^c *Evans v. Taylor*, 2 Dowl. 349. ^d s. 23.

^e *Gerrard v. Arnold*, 6 Dowl. 336; 1 H. and W. 18.

^f *Woollison v. Hodgson*, 2 Dowl. 360.

^g *Woollison v. Hodgson*, 2 Dowl. 360; *Hays v. Trotter*, 5 B. and Ad. 1106; 3 Nev. and M. 176.

^h *Morris v. Parkinson*, 3 Dowl. 744; 1 Gale, 160.

ⁱ *Higgins v. Woulcott*, 5 B. and C. 760; 8 D. and R. 589
Swimburn v. Hewitt, 7 Dowl. 314.

^j *Bruton v. Ballard*, 4 Bing. 561.

^k *Webb v. Stone*, 1 Anstr. 260; *Yea v. Yea*, 2 Anstr. 194;
Hindle v. Shackleton, 1 Taunt. 536; *Gale v. Paxington*, 1 M'Clel. and Y. 354.

after the taxation, and they cannot be so, after a subsequent settlement has been made between the attorney and client,^k or after any great delay;^l but these costs are not ever allowed to the attorney, if he has wilfully inserted in the bill any item or charge which he must have known ought not to have been inserted.^m In order to bring the case within the statute as to the costs of the taxation, it is indispensable that the client should have signed the undertaking.ⁿ Where a whole division in the bill, is disallowed;^o as upon the ground of the client not being liable;^p it does not affect the calculation as to the costs of taxation; but it is otherwise where there is not any dispute as to the liability, and the charges are struck off, upon the ground of their being improper;^q and upon the other hand, the attorney will be allowed to include the bill of a proctor, paid for his client.^r In another case,^s payment by him of the debts and costs in two actions, and made for his client, were allowed as "disbursements;" and this even though there was a credit for a sum of money received by the former at a different time, and for a different amount, and though not specifically appropriated to such payment.

[6.] The lien of an attorney extends over all deeds and papers of his client;^t and either in his own actual, or in a legal sense, constructive,^u possession; over money

^k *Whitfield v. James*, 8 J. B. Moore, 40; 1 Bing. 207.

^l *Yea v. Yea*, 2 Anstr. 589.

^m *Holderness v. Barkwith*, 3 M. and W. 341; 6 Dowl. 392;

ⁿ *Howard v. Groom*, 1 H. and W. 355; 4 Dowl. 21; *Rogers v. Paterson and another*, 4 M. and W. 588.

^o *White v. Milner*, 2 H. Bla. 357; 3 Nev. and M. 767.

^p *Mills v. Revett*, 3 Nev. and M. 767; 1 Ad. and El. 856.

^q *Morris v. Parkinson*, 1 Gale, 160; 3 Dowl. 744.

^r *Franklin v. Featherstonhaugh*, 3 Nev. and M. 779; 1 Ad. and El. 475.

^s *Hindle v. Shackleton*, 1 Taunt. 536; *Harrison v. Ward*, 1 H. and W. 353; 4 Dowl. 39.

^t *Stevenson v. Blakelock*, 1 M. and S. 535; *Lambert v. Buckmaster*, 4 D. and R. 125; 2 B. and C. 616; *Bell v. Taylor*, 8 Sim. 216.

^u *Dicas v. Stockley*, 7 C. and P. 587; *Boxon v. Bolland*, 12 Nov. 1839. (L. C.)

received for^v or awarded to the client,^w or received by himself;^x and as against assignees of a bankrupt, for his costs of an action by the latter, and awarded therein;^y and when he acts as a commissioner under 3 & 4 W. 4, c. 74,^z he has a lien upon the acknowledgments, and other documents laid before him in that character;^a and the rule is the same where they are retained by the co-commissioner, but with the privity of the party claiming such lien; and when he has done business for a corporation, and as their town clerk,^b he has a lien over their papers and in his hands.

[7.] The London agent has a similar lien,^c and as against all claimants; and until payment of his account in the particular action, and also upon money received by him therein, and though out of his possession, if *unlawfully* so, and not by mistake merely. As against his own client—the country attorney,^d his lien is more extensive, for here he has a lien upon all monies and papers, and as to his general balance.

[8.] Whenever the words “damages and costs”^e occur; they mean those which arise from and in two adverse actions, and a set-off as to these, or as to the “debt, damages and costs,” where the action is in debt, are not allowed; except^f subject to the lien of the respective attornies.^g But even this lien is not regarded in two

^v *Griffin v. Eyles*, 1 H. Bla. 122; *Pounset v. Humphreys*, 1 Coop. 142

^w *Omerod v. Tate*, 1 East, 464.

^x *Jones v. Turnbull*, 5 Dowl. 571.

^y *Pounset v. Humphreys*, 1 Coop. 142. ^z s. 81.

^a *Ex parte Grove*, 5 Dowl. 375; 3 Bing. N. C. 304; 3 Scott, 671.

^b *Rex v. Sankey*, 5 Ad. and Ell. 423.

^c *Dicas v. Stockley*, 7 C. and P. 587; *White v. Royal Exchange*, 1 Bing. 20; 7 J. B. Moore, 249.

^d *Taunton v. Goforth*, 6 D. and R. 384; *Bray v. Hine*, 6 Price, 203; *Gray v. Kirby*, 2 Dowl. 601.

^e *George v. Elston*, 1 Bing. N. C. 513; 3 Dowl. 419; 1 Scott, 518; *Lees v. Kendall*, 5 Nev. and M. 340; 1 Har. and W. 316.

^f *Wenham v. Fowle*, 2 Dowl. 444; *Woodroffe v. Wotton*, 4 Scott, 364; *Caddell v. Smart*, 4 Dowl. 760.

^g R. H. 2 W. 4, (93); *Domett v. Helyer*, 2 Dowl. 520; *Caddell v. Smart*, 4 Dowl. 760.

instances : 1. Where there are mutual claims as to the respective parties, and in the same action.^h 2. Interlocutory costs therein,ⁱ and even the costs arising upon a reference to an arbitrator ;^k provided^l such costs do not form a condition precedent to taking ulterior proceedings. The lien of the attorney extends only to the particular action,^m in which such costs are incurred, and is calculated as upon a taxation between "attorney and client ;"ⁿ and it is not allowed unless the attorney was qualified^o to practise in the Court^p where the business was done. Independently of the statute,^q the Court has an authority, where an attorney claims a lien upon the deeds and papers of his client, to order a taxation of the bill of costs, forming the basis of such lien.^r

[9.] The authority of the attorney extends to his demanding costs in the action, and made payable to his client;^s and it continues until final judgment is perfected.^t He cannot be changed by the client previously to that period;^u except by a Judge's order, or rule of Court; and which are only granted upon the terms of the latter paying the costs of the attorney in the particular action when taxed, unless such terms are waived by him.

^h *George v. Elston*, 1 Scott, 518; 3 Dowl. 419; 1 Bing. N. C. 513; 1 Hodges, 63; *Pocock v. O'Shaunessy*, 6 Ad. and Ell. 807; *Eades v. Everatt*, 3 Dowl. 687; *Newton v. Harland*, 6 Dowl. 644.

ⁱ R. H. 2 W. 4, (93); *Doe v. Sinclair*, 5 Dowl. 26; *Halliday v. Lawes*, 4 Scott, 475.

^k *Cowell v. Betteley*, 10 Bing. 432; 2 Dowl. 780.

^l *Doe v. Carter*, 8 Bing. 330; *Holliday v. Lawes*, 5 Dowl. 636; 3 Bing. N. C. 774

^m *Watson v. Marshall*, 1 Hodges, 73; 1 Bing. N. C. 727.

ⁿ S. C. 1 Hodges, 73; 1 Bing. N. C. 727.

^o 2 Geo. 2, c. 23, ss. 1, 10, 24; 1 & 2 Vict. c. 45, s. 3.

^p *Latham v. Hide*, 1 C. and M. 128; 1 Dowl. 594; *Newton v. Spencer*, 4 Bing. N. C. 174; 5 Scott, 489; 6 Dowl. 401.

^q 2 Geo. 2, c. 23, s. 22.

^r *In the matter of Rice*, 2 Keen, 181.

^s *Cox v. Salmon*, 2 M. and W. 127.

^t *Tipping v. Johnson*, 2 B. and P. 357; *Batchelor v. Ellis*, 7 T. R. 337; *Marr v. Smith*, 4 B. and A. 466.

^u R. M. 1654, (X.) K. B.; *Macpherson v. Robinson*, 1 Dougl. 217; *Ginders v. Moore*, 1 B. and C. 654; *Doe v. Bransom*, 6 Dowl. 490; *Hill v. Roe*, 6 Taunt. 532.

[10.] The subject as to the orders of Judges at chambers,^w orders of *nisi prius*,^x and rules of Court,^y is, under the operation of the recent act,^z become of great importance.

Any^a of the fifteen Judges of the three Superior Courts of Law, has authority to make at chambers, or elsewhere, orders as to any^b proceedings relating to any of such Courts, or pending therein. He has also power, under the Annuity Act,^c to order an inspection and copies of all or any of the deeds and other documents referred to in the memorial, and to be delivered to the grantor, and at the costs mentioned therein.^d In ordinary cases in practice, he can order costs^e against the parties,^f or their attorneys,^g and even fix the amount to be paid.^h The Court will not addⁱ costs to the terms of any order made by him; or, except under very special circumstances, review it in regard to the propriety^j of his having given, or refused costs thereon. Orders of *nisi prius* are made under the authority of the Judge

^w *The King v. Almon*, Wilmot's Opinions and Judgments, p. 243; *Jameson v. Raper*, 3 J. B. Moore, 65; *Rex v. Price and another*, 2 Dowl. 233.

^x *Cranch v. Tregoning*, 5 Dowl. 230.

^y *Phillips v. Weyman*, 2 Chit. 266; R. G. Hil. T. 1 Vict.

^z 1 & 2 Vict. c. 110, ss. 3, 5, 7, 14, 15, 17, 19, 22.

^a 1 & 2 Vict. c. 45, s. 1.

^b *Griffin v. Taylor*, 6 Dowl. 620; 4 Bing. N. C. 369; 6 Scott, 141; *Ex parte Smith*, 7 D. and R. 382; *Ashworth v. Heathcote*, 6 Bing. 597; 4 M. and P. 396.

^c 53 Geo. 3, c. 141; 6 B. and C. 171.

^d s. 5.

^e *Re Bridge*, 2 Ad. and Ell. 48; 4 Nev. and M. 5; *Doe v. Roe*, 1 Dowl. 274; 9 Bing. 104; 2 M. and Scott, 119; *Hughes v. Brand*, 2 Dowl. 131; and if a matter which ought to have been applied for to him, is moved in Court; the costs only, as if the former proceedings had been adopted, will be allowed, *Vaughan v. Trewent*, 2 Dowl. 299.

^f *Norton v. Curtis*, 3 Dowl. 245; *Cheslyn v. Pearce*, 4 Dowl. 693.

^g *Finnerty v. Smith*, 1 Scott, 743; 1 Hodges, 158.

^h *Collins v. Aaron*, 4 Bing. N. C. 233; 6 Dowl. 423; 5 Scott, 595.

ⁱ *Davy v. Brown*, 1 Scott, 384; 1 Bing. N. C. 460; 1 Hodges, 22.

Sheriff v. Gresley, 5 Nev. and M. 491; 1 H. and W. 588.

who tries the cause there. In order to enforce^k any of these orders, or even to amend^l them, the particular order must be previously made a rule of Court. The motion is "as of course," made during term time;^m except as to an order dated before the last day of the preceding term.

[11.] A motion for a rule to shew cause is often preceded by a notice of motion; and in order that it may while pending operate as a stay of proceedings; there must in all cases in the Common Pleas,ⁿ and in the Exchequer of Pleas,^o be such a notice; and so also in the Queen's Bench, where the motion is for "judgment as in case of a nonsuit."^p The costs of such notice,^q when *bond fide* incurred, and where it produces success, or at least the main result purposed thereby, are considered as "costs in the cause;"^r and with respect to the principles which regulate the practice as to costs upon motions, there are certain instances important to mention by way of example.

[12.]—1. Unless the motion in terms prays for costs, they are not usually given;^s unless indeed the other side asks for some indulgence or favourable terms, as that "an action shall not be brought." 2. Where cause is not shewn against a rule, and which prayed for costs,^t it is of course, for it to be made absolute "with costs;" or rather "in the very terms as prayed thereby." 3. Upon a rule which prays two or more several things,^u the ap-

^k *Rice v. Brown*, 1 B. and P. 39; *In the matter of Turner*, 6 Dowl. 6; *Bath (Mayor) v. Pinch*, 4 Scott, 299; *Baker v. Rye*, 1 Dowl. 689; *Woollisen v. Hodgson*, 3 Dowl. 178; *Jameson v. Raper*, 3 J. B. Moore, 65, note.

^l *Cranch v. Tregoning*, 5 Dowl. 230; *Anon.* Loft. 131.

^m *The King v. Price*, 2 Dowl. 223; 2 C. M. and R. 212; *Swaine v. Stone*, 4 M. and Scott, 584.

ⁿ *Rolfe v. Brown*, 1 Hodges, 27.

^o *Hannah v. Wyman*, 3 Dowl. 673; *Fortescue v. Jones*, 1 Dowl. 524.

^p R. H. 2 W. 4 (68); *Stratton v. Regan*, 2 Dowl. 585.

^q *Rolfe v. Brown*, *supra*; *Hannah v. Wyman*, *supra*.

^r *Goodall v. Ray*, 4 Dowl. 1; 1 H. and W. 233.

^s *Anon.* 1 Chit. 399; *Hannah v. Willis*, 5 Bing. N. C. 385.

^t *Rex v. Sheriff of Middlesex*, 2 Dowl. 5.

^u *Aliven v. Furnival*, 2 Dowl. 49; *Huggitt v. Parkin*, 1 Bing. 65; 7 Moore, 359; *Edwards v. Danks* 4 Dowl. 357.

plicant succeeding only upon that part which is the least substantial,^v does not obtain any costs. 4. If a rule concerning the ordinary progress of the action is moved for, "with costs," but the Court direct it to be made absolute, and "without therein mentioning costs," they stand, as "costs in the cause;"^w and as part of the "general costs;" provided the applicant also succeeds therein; and also provided the subject-matter of the application was not merely collateral.^x 5. Where the rule is made absolute, and the words "without costs" are mentioned therein, they are not allowed for either party in any event;^y since this expression takes them, as it were, "out of the cause." Such a course is usual where the point is very novel,^z or where the party is called on by the rule to do some act and without any previous notice or demand to perform it; and on shewing cause he strictly confines himself to the question as to costs.^a 6. Where a matter is referred to one of the masters for inquiry, and to report or to decide;^b the applicant must take care that the rule so referring provides for, or as is usual, gives the officer power over the costs; for if there is not any such power given, the costs cannot, upon the report being made, be applied for.^c 7. If the party called on to shew cause applies for time to get up other affidavits, and the copy of the rule was served upon him in due time, the costs of such enlargement,^d and especially if made to another term, must be paid by the applicant, and as a condition precedent. 8. Where the rule is moved "for irregularity," and made absolute after cause shewn, the terms^f usually

^v *Mc Andrew v. Adam*, 1 Scott, 99; 1 Bing. N. C. 270; 3 Dowl. 120.

^w *Goodhall v. Ray*, 4 Dowl. 1; 1 H. and W. 333; *Drinker v. Pascoe*, 4 Dowl. 566.

^x *Mummery v. Campbell*, 2 Dowl. 798; 4 M. and Scott, 379; *Southes v. Terry*, 2 Dowl. 522.

^y Archb. Practice (by Chitty)

^z *Hawkins v. Clarke*, Bail Court, 1838, MSS.; *Jones v. Smith*, 3 M. and W. 526.

^a *Bowen v. Bramidge*, 2 Dowl. 213.

^b *Noy v. Reynolds*, 4 Nev. and M. 483; 1 H. and W. 14.

^c *Holmes v. Edwards*, 6 Dowl. 51.

^d *Lewis v. Davison*, 3 Dowl. 272.

^f *Minns v. Baxter*, 1 T. R. 16; *James v. Raggett*, 2 B. and A. 776; 1 Chit. 471; *Anon.* 1 Chit. 398, note; *Bates v.*

are "with costs, and for the applicant not to bring any action." 9. Upon an application made under 1 & 2 Vict. c. 110,^s by a defendant improperly arrested, and for his discharge out of custody, the act expressly gives costs.^h In such a case these costs should always be applied for at the time, for they are notⁱ considered as "costs in the cause;" and the same observation applies where the objection is merely as to the "affidavit to hold to bail."^j 10. Where a rule for an attachment is granted against a sheriff, the costs are not expressed therein; but they are allowed upon the attachment being afterwards set aside "upon terms,"^k or if the writ issues, for the contempt cannot be purged^l until all these costs have been paid.^m In practice, a bill of these costs is always left with the Coroner. 11. A similar rule holds where an attachment is granted against a witness for non-attendance upon, or the non-production of documents in compliance with a writ of *subpœna*,ⁿ for he can only be permitted to purge his contempt, without having judgment passed on him; by paying all the costs which have been incurred by the party who subpœnaed him, and by reason of his non-attendance. 12. And so also in other cases of attachments,^o although not connected with

Turner, 10 J. B. Moore, 32; *Denman v. Bull*, 9 J. B. Moore, 745; 2 Bing. 387; *Blissett v. Tennant*, C. P. 1838, MSS.; *Crew v. Altwood*, 7 Taunt. 70; 2 Marsh, 337.

^s s. 6; *Hutt v. Capelin*, 5 Scott, 415.

^h *Blissett v. Tenant*, *supra*; *Jones v. Smith*, 3 M. and W. 526.

ⁱ *Mummery v. Campbell*, 2 Dowl. 798.

^j *Molineux v. Dorman*, 3 Dowl. 662; *Lear v. Heath*, 1 Marsh, 19; 5 Taunt. 201.

^k ——— *v. Harbord*, Q. B. 1838, MSS.; *Norris v. Brighton*, 7 Dowl. 144.

^l *Rex v. Sheriff of Devon*, 3 Dowl. 10; *Pitt v. Combes*, 3 N. and M. 212; *Rex v. Sheriff of London*, 9 East, 316; *Heppell v. King*, 7 T. R. 370; *Fowlds v. Mackintosh*, 1 H. Bla. 233.

^m *Rex v. Sheriff of Middlesex*, 3 East, 604.

ⁿ 5 Eliz. c. 9, s. 12; *Barrow v. Humphreys*, 3 B. and A. 598.

^o *Coulson v. Graham*, 2 Chit. 57; *Neal v. Holden*, 3 Dowl. 493.

costs or money; *e. g.* for not delivering over deeds or papers; for here the costs of the motion for the attachment, of the writ, and of all proceedings thereon, must be paid by the party attached before his contempt can be purged. 13. Where the attachment is directed to lie in the office^p for a certain time specified in the rule for it, and with the view of the party against whom it is granted complying with the terms of the original rule of Court; it ought always to be made a term in the rule for the attachment, that the party intended to be attached should, if he complies with such terms, also pay these subsequent costs. 14. If a rule is made absolute on "payment of costs," the payment of them, and as taxed, becomes, and before the party in whose favour such rule is granted, a condition precedent; and upon such a rule being made, as it is not compulsory but optional^q only in the applicant, there should always be a term inserted therein, that if they are not paid, the rule shall stand "discharged with costs."^r 15. Where costs are taxed under a judge's order, and not paid, they must be demanded in writing of the party making default; and if they are not then paid, a written notice should be served upon him, and stating that if they are not paid within the time therein specified; the Court will, on an affidavit of the facts, be moved to make the judge's order a rule of Court, and for him to pay the additional costs occasioned by such application: an affidavit of all these facts must then be made, and "a rule to shew cause" obtained, and in the very terms of the notice; and on its being made absolute, the costs thereon, and of making the order a "rule of Court," are marked, and in addition, and the allocatur is made out upon the latter rule. In special cases, and by leave of the Court, the service of a rule^s calling upon an attorney to pay costs will be by a

^p *Rex v. Sheriff of Middlesex*, 9 East, 316; *Heppel v. King*, 7 T. R. 370; *Fowlds v. Macintosh*, 1 H. Bl. 233; *Rex v. Sheriff of Middlesex*, 3 East, 604.

^q *Fricker v. Eastman*, 11 East, 319.

^r *Doe v. Haddon*, Hullock on Costs, 401; *Stokes v. Woodeson*, 7 T. R. 6; *Rose v. Fenn*, 2 Dowl. 182; *Turner v. Gill*, 3 Dowl. 30; *King v. Clifton*, 5 T. R. 257; *Ryalls v. Emerson*, 2 Dowl. 357; *Harrison v. Ward*, 3 Dowl. 541.

^s *Burrell v. Seaton*, 5 Dowl. 661.

term in the rule to shew cause, ordered to be served either upon him or his London agent.

Where a rule is amended in order to correct a mere mistake of the officer,^t or where it is not moved for irregularity, or want of good faith, or upon some wilful default,^u or some indulgence is not given; it is not usual, even though the rule is made absolute, to give costs thereon, *e. g.* a rule in ejectment, for possession to be restored;^v nor where it is for a small matter, and proper only for an application to a judge at chambers.^{vv}

If the motion is as to an ejectment by a mortgagee, and made by the mortgagor, in order to stay proceedings,^w on payment of the principal, interest and the costs; the terms are "costs as between party and party" only;^x and where after a rule to set aside proceedings for irregularity is obtained, the other party offers to waive the proceedings, and pay the costs of the rule to shew cause; the costs subsequent to the offer fall on the side not accepting it.^y

[13.] With respect to shewing cause, either upon a notice of motion or upon a rule, there are certain regulations with respect to costs. 1. Where cause is shewn in the first instance, costs are not expressly given;^z for there are not yet any proceedings^a upon which they can be taxed, unless a case of vexation is made out against the applicant. But they are allowed in the result of the cause, to the party successfully shewing cause,^b

^t *Downing v. Jennings*, 5 Dowl. 373; *Lopez v. De Tastet*, 8 Taunt. 712; *Popkins v. Amory*, 5 M. and P. 319.

^u *Townsend v. Burns*, 3 Tyr. 104; 1 C. and M. 177 1 Dowl. 629.

^v *Doe dem. Stevens v. Lord*, 6 Dowl. 256.

^{vv} *Vaughan v. Trewent*, 2 Dowl. 299.

^w 7 G. 2, c. 20, s. 1.

^x *Doe dem. Capps v. Capps*, 4 Scott, 468; 5 Dowl. 634.

^y *Ex parte Ardens*, 1 Price, 149; *Hallon v. Stocking*, 2 Tyr. 165; 2 C. and J. 60; 1 Dowl. 296.

^z *Read v. Speer*, 5 Dowl. 330; *Fitch v. Green*, 2 Dowl. 439; *Waldron v. Norris*, 2 W. Bla. 769; *Gerrard v. Gaskell*, 2 Chit. 401; *Anon*, 1 Dowl. 148; *Rex v. Long*, 1 M. and R. 139.

^a *Poole v. Watson*, Q. B. Trin. T. 1839.

^b *Goodhall v. Ray*, 4 Dowl. 1; 1 H. and W. 333; *Southee v. Terry*, 2 Dowl. 522; *Johnson v. Closs*, 1 Chit. 559.

provided he also succeeds in the action. 2. If the party called upon to shew cause, gives previous^c notice of shewing cause as to part only, and succeeds as to such part, the rule is as to so much, for him to have his costs thereon. 3. And even if without any such notice, if he professes at once to shew, and actually shews cause only as to such part; the rule, though made absolute as to the residue, is without any costs.^d 4. Where the affidavit upon which the rule was moved is faulty, and therefore ordered to be re-sworn, the course is, to enlarge the rule, upon the terms of the applicant paying the costs thereof.^e The same rule holds, where, from the affidavit not being entitled, an enlargement of the rule is ordered;^f and even though the motion is against an attorney. 6. So also, where the rule is amended^g by inserting the words "upon reading (*certain documents*)," and then enlarged. 7. Where a rule moved "for irregularity with costs," is discharged, it is always^h drawn up as "discharged with costs." 8. In other cases, the costs are in the discretion of the Court,ⁱ and it is very usual where a rule is discharged, and where they were not prayed by the terms of the rule;^j for costs not to be ordered expressly; but even to this practice there are certain exceptions. 9. Where an application is made for an attachment,^k the rule for it, if discharged, is commonly so "with costs;" and so also, though the rule is discharged upon technical grounds merely. 10. Where the rule is moved "for irregularity," though without

^c *M'Andrew v. Adams*, 3 Dowl. 120; 1 Scott, 99; 1 Bing. N. C. 270; *Aliven v. Furnival*, 2 Dowl. 59.

^d *Idem*; *Clarke v. Crockford*, 3 Dowl. 693.

^e *Rex v. Justices of Warwickshire*, 5 Dowl. 382.

^f *Simes v. Gibbs*, 6 Dowl. 310; 1 W. W. and H. 48.

^g *Lewis v. Davison*, 3 Dowl. 272.

^h *R. M.* 37 G. 3; 7 T. R. 82; *Mines v. Baxter*, 1 T. R. 16; *Huggitt v. Parkin*, 1 Bing. 65; 7 Moore, 359 *Drinker v. Pascoe*, 4 Dowl. 566; *Esdaile v. Davis*, 6 Dowl. 465.

ⁱ *Bleasdale v. Darby*, 9 Price, 606; *Harris v. Matthews*, 4 Dowl. 602; *Anon.*, 3 Price, 489; *Gray v. Swing*, 1 Price, P. C. 35.

^j *Rex v. Sheriff of Middlesex*, 2 Dowl. 5.

^k *Jacobs v. Hungate*, 3 Dowl. 456.

expressly praying for costs, yet if it be discharged,^m it is ordinarily so "with costs,"ⁿ unless discharged on technical grounds only. 11. So also, if a rule moved palpably for costs only,^o is discharged. 12. So, if it was made against the settled practice of the Court,^p or contrary to the course in the office.^q 13. Or is merely speculative,^r or against the Master's report.^s 14. Where the applicant uses in his affidavit, unnecessary and lengthy matter,^t the Court will direct the Master to tax for the party shewing cause, his costs of, and occasioned thereby. 15. So, where unnecessary and scandalous matter is used, or the affidavits are improperly framed, the courts, though they discharge the rule, will upon that account, deprive the party of any costs thereon.^u 16. Although the costs upon a former rule,^v moved by the same party and for the same subject matter, remain wholly unpaid; this fact does not form any ground against, or even for staying^w a renewed application, until they are paid. Costs of this description, are always deemed interlocutory,^x and may be enforced even after the action is settled.^y

[14.] There are also similar regulations with respect to the costs upon an application, made under the Interpleader Act;^z when made by a defendant,^a it must be

^m *Tilley v. Henley*, 1 Chit. 136; *Huggitt v. Parkin*, 1 Bing. 65; 7 Moore, 359.

ⁿ *Preedy v. Lovett*, 4 Dowl. 671; *Hesker v. Jarman*, 1 C. and M. 408; 3 Tyr. 381; *Huggitt v. Parkin*, 1 Bing. 65; *Edwards v. Danks*, 4 Dowl. 357; *Smith v. Clarke*, 2 Dowl. 218.

^o *Lawson v. Case*, 2 Dowl. 40.

^p *Stanbridge v. Hansard*, Q. B. F. T. 1839, MSS.; *Houlditch v. Swinfen*, 2 Bing. N. C. 712.

^q *Kemp v. Hyslop and another*, 4 Dowl. 687.

^r *Primrose v. Bradley*, 4 Tyr. 995.

^s *Williams v. Wynne*, 9 Price, 344.

^t *Lewis v. Woolrych*, 3 Dowl. 692.

^u *Thompson v. Dica*, 2 Dowl. 93; *Rex v. Byrne*, 6 Dowl. 36; *Bane v. Jones*, 8 D. and R. 114.

^v *Wilton v. Chambers*, 1 H. and W. 116.

^w *Dawson v. Sampson*, 2 Chit. 146; *Pashley v. Poole*, 3 D. and R. 531.

^x *Doe v. Lord*, 1 Per. and D. 388.

^y *Abernethy v. Paton*, 5 Bing. N. C. 276; 7 Scott, 122.

^z 1 & 2 W. 4, c. 58.

^a s. 1.

after declaration and before plea;^b and when the proceedings happen in vacation time, must be made to a judge at chambers. He has in such a case, authority to order a feigned issue,^c or by consent of all parties,^d may in a summary manner, dispose of the matter in dispute,^e and also their costs.^f Where the application is made upon the part of the defendant fairly and *bonâ fide*, he is entitled to be paid his costs in the action up to the time of the application, and also those of and consequent upon it;^g and these costs are, in the result, payable by the unsuccessful party;^h but in the first instance, out of the fund in dispute, or the proceeds of the goods.ⁱ When the application is made upon the part of the sheriff,^j if it be in vacation time, he must apply to a judge at chambers,^k but he is not entitled to any costs,^l except the expences of keeping possession; and not even to those, unless he did so at the request, or for the benefit of the parties.^m In each of these applications where an issue is directed, the party who succeeds thereon, has his costs therein,ⁿ and including those paid to the original defendant,^o or to the sheriff for

^b *Parker v. Linnett*, 2 Dowl. 562.

^c *Lydal v. Biddle*, 5 Dowl. 244; *Pitchers v. Edney*, 4 Bing. N. C. 720.

^d s. 2.

^e *Curlewis v. Pocock*, 5 Dowl. 381; *Bramidge v. Ailshead*, 2 Dowl. 59; *Allen v. Gibbon*, *Id.* 292.

^f *Morland v. Chitty*, 1 Dowl. 520.

^g *Cotter v. Bank of England*, 3 Moore and Scott, 180; 2 Dowl. 728; *Pitchers v. Edney*, 4 Bing. N. C. 720.

^h *Parker v. Linnett*, 2 Dowl. 562; *Duear v. Mackintosh*, 3 Moore and Scott, 174; 2 Dowl. 730; *Bowen v. Bramidge*, *Id.* 213; *Matthews v. Sims*, 5 Dowl. 234.

ⁱ *Pitcher v. Edney*, 4 Bing. N. C. 720.

^j 1 & 2 W. 4, c. 58, s. 6.

^k 1, & 2 Vict. c. 45, s. 1.

^l *West v. Rotherham*, 2 Bing. N. C. 527; 1 Hodges, 561; 2 Scott, 802; *Armitage v. Foster*, 1 H. and W. 208; *Clarke v. Chetwode*, 4 Dowl. 635; *Dabbs v. Humphries*, 1 Bing. N. C. 412; 1 Hodges, 4; 3 Dowl. 377; *Eveleigh v. Salisbury*, 5369; *Cox v. Fenn*, 7 Dowl. 350.

^m *Underden v. Burgess*, 4 Dowl. 104.

ⁿ *Bland v. Delano*, 6 Dowl. 293.

^o *Seaward v. Williams*, 1 Dowl. 528.

keeping possession,^a of the issue,^r and also of the application afterwards made by him for these costs.^s Where the sheriff has been guilty of gross misconduct, the Judge will make him pay the costs of the issue.^t

[15.] Where it is necessary to enforce the Judge's order, *per se*,^u it must be previously made a rule of the Court. There are a few cases, which, as they do not specifically relate to sums of money, or costs, are not affected by the 1 & 2 Vict. c. 110,^w which gives certain remedies upon rules of Court. 1. Where proceedings in attachment are had against a witness for not appearing and giving evidence upon a writ of *subpoena ad testificandum*.^x 2. Or for not producing at a trial, documents in his possession and referred to in the *duces tecum* clause^y of such a writ. 3. Where the like proceedings are had against an attorney who fails to comply with his undertaking given *as such*, and in the cause, and to a party therein.^z 4. Where he disobeys a rule of Court ordering him to do a specific act, *e. g.* to deliver over deeds or papers, or to deliver a signed bill of costs. 5. Where a party in other cause or other person, does the like.

[16.] In these cases, the remedy is, by a rule "to shew cause" why a writ of attachment should not issue; and if no cause is shewn, or an insufficient one, the rule for it is made absolute. There are similar proceedings against the sheriff, upon his making default in the performance of acts required of him under a rule of Court, or a Judge's order, *e. g.* 1. If a Judge's order is made in vacation for him to return a writ of *distringas*, *capias*, *capias ad satisfaciendum*, writ of execution in the nature of an *elegit*, or a writ of *feri facias*, his disobedience thereto, fixes him with an inchoate contempt, and which he cannot of his own act purge in the mean-

^a *Dabbs v. Humphries*, 1 Bing. N. C. 412; 1 Hodges, 4; 3 Dowl. 377.

^s *Scales v. Sargeson*, 4 Dowl. 231; *Seaward v. Williams*, 1 Dowl. 528. ^t *Bowen v. Bramidge*, 2 Dowl. 213.

^u *Blaud v. Delano*, 6 Dowl. 293.

^w 1 & 2 W. 4, c. 58, s. 7.

^x s. 18.]

^y *Rex v. Stretch*, 4 Dowl. 30; *Davis v. Lovell*, 7 Dowl. 178; 4 M. and W. 679.

^z *Evans v. Moseley*, 2 Dowl. 364; *Doe v. Kelly*, 4 Dowl. 273.

^{aa} *Milward v. Clerk*, Cro. Eliz. 190; 2 Saund. 59 b.

time; and the contempt upon the order being made a rule of Court in the next term, is complete.^a In the Courts of Queen's Bench and Exchequer of Pleas, the rule which makes the Judge's order a rule of Court, also directs the writ of attachment to issue. But in the Common Pleas there is a separate motion for each. 2. If the default of the sheriff is to a side-bar rule in term time, the rule for the attachment is ordered on the contempt. 3. Where the coroner on being ruled to return a writ directed to him, or to bring in the sheriff's body, makes default; there is a motion, and "as of course" for a writ of attachment, and directed to elisors.^b

Where the rule for the writ of attachment is drawn up, the proceedings as to it become, as it were, a new suit, and are entitled therein;^c and in the Queen's Bench they are carried on upon the Crown Side,^d and transacted by the solicitor through a clerk in Court there. The writ is returnable upon a day certain and in term time; and in the Queen's Bench, on its being returned, it is filed in the "record of orders," and if it is "*non est inventus*," the writ must be renewed from term to term; and after the lapse of four terms, if no proceedings have been had in the *interim*; an application must be made to the Court, and upon an affidavit of the circumstances, and for a writ to issue *de novo*. If the party, in whose favour the writ was granted, dies, there must be another rule moved for; and if it concerns the personalty, upon the part of his personal representative; and if it concerns the realty, then by the heir or devisee, and calling upon the party liable to shew cause why a new writ should not issue.

The writ, when for non payment of money, or for money and costs, or for costs only, issues also in effect for the costs; the amount is indorsed thereon, and they

^a 2 W. 4, c. 39, s. 15; R. M. 3 W. 4; *Harmer v. Tilt*, 2 Marsh, 251; *Barnard v. Binger*, 1 N. R. 121; *Howell v. Bul-teel*, 3 Dowl. 99 n.; *Forster v. Kirkwall*, 4 Dowl. 370; *Pelcher v. Woods*, 4 Dowl. 329; *Stainland v. Ogle*, 3 Dowl. 96; *Hinchliffe v. Jones*, 4 Dowl. 86; 1 H. and W. 337.

^b *Andrews v. Sharp*, 2 W. Bla. 911; *Rex v. Peckham*, *Ibid.* 1218.

^c *Wood v. Webb*, 3 T. R. 253; *Rex v. Sheriff of Middlesex*, 7 T. R. 439; *Ibid.* 5 B. and C. 389.

^d Gude's Crown Office Practice, vol. 1, p. 256.

include the fees and costs incurred in issuing, and incidental thereto.^e In ordinary practice, they are not taxed, but a fair bill of them is made out, and with the writ, delivered at the sheriff's office.^f The party liable may, on obtaining a Judge's order, have them taxed. In cases of attachment, the sheriff or coroner may take a bail-bond; and in this case any costs incurred thereon by the applicant, are taxed for him as part of "the contempt costs." If the writ of attachment is directed to lie for a specified time in the office,^g a copy of the bill is left there.

Where the party in contempt is privileged from arrest upon final process,^h and the matter relates to a mere money demand, or to costs;ⁱ the proceedings must be by writ of *distringas*,^j or sequestration,^k against his property merely, or by a writ of execution under the provisions of 1 & 2 Vict. c. 110, s. 18; but if it relate to other matter, as of a *quasi* criminal nature,^l a writ of attachment will lie, even against such privileged persons.

If the proceeding is for an attachment, a demand of the costs must previously be made, and either by the party to whom they are payable, or his attorney in the action;^m or by some person authorised under a power of attorney;ⁿ and though the party to whom they are payable, dies, yet the writ will afterwards lie;^o and where

^e *Tyler v. Campbell*, 5 Bing. N. C. 193.

^f Gude (C. O.) Practice, vol. 1, p. 254; *Rex v. Stokes*, 1 Cowp. 137; *Pitt v. Coombs*, 3 Nev. and M. 312; 5 B. and Ad. 1078.

^g *Levy v. Duncombe*, 3 Dowl. 447.

^h *Lord Falkland's case*, 1 Tidd. 194; and see post, "*Capias ad Satisfaciendum*."

ⁱ *Rex v. Bishop of St. Asaph*, 1 Wils. 332.

^j Gude (C. O.) Practice, vol. 1, p. 253.

^k *Anon.* Loft. 156.

^l *Rex v. Bishop of St. Asaph*, 1 Wils. 332; *Long Wellesley's case*, 2 Russ. and Myl. 639.

^m *Inman v. Hill*, 4 M. and W. 7; 6 Dowl. 666; *Mason v. Whitehouse*, 6 Dowl. 602; 6 Scott, 246; 4 Bing. N. C. 692; 6 Scott, 575.

ⁿ *Clark v. Dignum*, 3 M. and W. 319; *Doe d. Cope v. Johnson*, 7 Dowl. 550; Stamp Act, 55 G. 3, c. 184, Schedule.

^o *Doe d. Wright v. Wright*, (Q. B.) 1838, MSS.; *Browrigg v. Hamilton*, 1 Alcock and Napier, 170. (Irish.)

they are payable to a sheriff, a demand by his undersheriff, though the sheriffalty is expired, will suffice.^p

Where husband and wife are parties to the suit, and they make a default in payment of costs, awarded against them, a writ of attachment will only lie against the former.^q

[17.] A rule of Court made by one of the three Superior Courts of Law at Westminster, and for the payment of any "costs, damages, or expences," has, under the enactments of 1 & 2 Vict. c. 110,^r the effect of a final judgment; they constitute, as it were, a "judgment debt;" and the party to whom they are payable, is deemed a judgment creditor. Such a rule, when drawn up in vacation, as under a Judge's order, for computing, in an action "on promises," principal and interest upon a bill of exchange, or promissory note, bears upon its face the real date;^s and it is entered and takes effect from that time; except^t as to "lands, tenements, or hereditaments;" and in regard of purchasers *bond fide* for valuable consideration, mortgagees and creditors. The practice, as required by the above statute is, to leave with the senior master of the Court of Common Pleas, a minute or memorandum containing the "name" and usual or last known place of abode," and the "title, trade, or profession" of the person whose estate it is intended to be charged thereby; also the "name of the Court," and "title of the cause or matter" in which such rule was made; also the "date" of the rule, and an "account of the debt, damages, and costs, or monies thereby ordered to be paid." It is the duty of the above officer to enter these particulars in his book, and in alphabetical order, and according to the name of the person whose estate it is intended to affect by such entry; and this officer must also^u insert in this book the year and day of the month when the memorandum or minute was left with him; and at the end of every five years, there must be a re-entry of this memorandum or minute.^v

^p *Reg. v. Matthey*, 6 Dowl. 515;

^q *Doe d. Allanson v. Canfield*, 6 Dowl. 523.

^r s. 18; *Reg. Gen. Hil. Vac.* 1839.

^s R. T. 1 Vict.

^t 1 & 2 Vict. c. 110, s. 19.

^u 2 Vict. c. 11, s. 3.

^v s. 4.

There are certain proceedings which, although in form *quasi* of a criminal nature, are essentially of a civil nature, and respect civil rights; *e. g.* the writ of prohibition applicable to all the three Courts,^w and the prerogative writ of *mandamus*,^x and an information in the nature of a *quo warranto*,^y applicable only to the Court of Queen's Bench.

[18.] Where in prohibition there is a judgment upon a nonsuit, verdict, demurrer, or otherwise; the costs of the application for the writ, as well as of the subsequent proceedings, are included therein, but not those in the Ecclesiastical Court.^z The plaintiff in prohibition, though he succeeds upon part only, provided it is upon a "main point,"^a has his costs: and so also, upon an inquiry of damages;^b but costs are not allowed, unless there have been pleadings^c in prohibition; nor where the rule to shew cause why the writ should not issue is discharged.^d

[19.] If upon a return to a writ of *mandamus*, a traverse is taken thereon;^e and a verdict is found thereupon, or there is judgment upon demurrer, or by *nil dicit*, or for want of a replication or other pleading in favour of the party prosecuting the writ, he is entitled to his costs;^f and in case of judgment being given for the party making such return, upon pleadings raised thereon; he is allowed

^w 2 & 3 Edw. 6, c. 13, s. 14; 8 & 9 W. 3, c. 11, s. 3; 1 W. 4, c. 21, s. 1; *Griffiths v. Anthony*, 5 Ad. and El. 623; *Hart v. Marsh*, *ibid.* 591; 5 Dowl. 424; 1 N. and P. 62.

^x *Rex v. Nottingham Water Works Company*, 1 Nev. and P. 480; 6 Ad. and El. 355; *Rex v. Wix*, 2 B. and Ad. 197; *Rex v. Hungerford Market*, *ibid.* 204, note.

^c Gude (C. O.) Practice, vol. 1, p. 155.

^z *Wills v. Turner*, Ca. Prac. (C. P.) 11; *Tessimond v. Yardley*, 5 B. and Ad. 458.

^a *Middleton v. Croft*, Cases temp. Ld. Hardw. 395; Andr. 60; 2 Stra. 1062; *Free v. Burgoyne*, (in error) 2 Bligh. N. S. 65; 1 Dow. N. S. 115; 6 B. and C. 27, 538; 8 D. and R. 179, 587; 9 D. and R. 14, 601.

^b *Bettison v. Henchman*, Ca. Prac. C. P. 20; *Bettison v. Savage*, 1 Com. 335.

^c *Rex v. Kealing*, 1 Dowl. 440; *Facy v. Lange*, Cro. Car. 559; *Pewtress v. Harvey*, 1 B. and Ad. 154.

^d *Mills v. Gregory*, 1 Ld. Keny. 134.

^e 9 Anne, c. 20, s. 2; 1 W. 4, c. 21, s. 3.

^f *Dublin (Dean) v. Rex*, (in error) 1 Bro. P. C. 73.

his costs;^g the costs of the application,^h where the writ is granted, or of answering it, where it is discharged;ⁱ but these costs can only be given to persons who are parties to the application or the rule to shew cause;^j and a corporator removed, and afterwards restored by a *mandamus*, cannot recover the costs of the writ from the corporation.^k

The costs of the writ,^l if issued and obeyed, are in the discretion^m of the Court, and must be applied for by a separateⁿ motion. The Court has authority to allow the party^o affected by the return to conduct the proceedings thereon, at his own expense, and to have the like remedies for his costs. The prosecutor, if he issues a writ of execution against the goods^p of the defendant, is also entitled, under 43 G. 3, c. 46,^q to levy the sheriff's poundage, and other costs of the execution. Where a *venire de novo* is awarded, the costs thereon are the same as in other actions.^r

^g 9 Anne, c. 20, s. 2.

^h 1 W. 4, c. 21, s. 6; as where public functionaries, such as clergymen or schoolmasters, endowed under an act of parliament, are obliged thus to proceed for their dues. *Rex v. St. Saviour's Southwark* (Churchwardens, &c.), 7 Ad. and El. 925; 3 N. and P. 345.

ⁱ *Rex v. Somersetshire (Justices)*, 4 N. and M. 394; and see *Rex v. Chester (Bishop)*, M. T. 27 G. 3; 1 T. R. 396; *Rex v. Canterbury (Archbishop)*, 15 East, 159. The Court determined in these cases, that where an application was made for a *mandamus* to a bishop, and without good foundation; they would discharge the rule with costs; and the same where applied for against an innocent party. *Rex v. Oxford Corporation*, 1 N. and P. 474; W. W. and H. 125.

^j *Rex v. Staffordshire (Justices)*, 1 Dowl. 507.

^k *Harman v. Tappenden*, 3 Esp. 278; 1 East, 555.

^l *Rex v. Bound*, 4 Ad. and El. 139; *Le Roy v. Stephens*, Sir T. Jones, 178.

^m *Reg. v. St. Saviour's*, 3 N. and P. 345; *Rex v. The Thames and Isis Navigation*, 5 Ad. and El. 804.

ⁿ *Reg. v. Salop (Justices)*, 6 Dowl. 23; *Rex v. Kirke*, 5 B. and Ad. 108^u.

^o 1 W. 4, c. 21, s. 4.

^p Whether by writ in the nature of an *elegit* or of *fieri facias*.

^q *Rex v. Glamorgan (Mayor, &c.)*, 2 Smith, 8.

^r *Shrewsbury (Town) v. Kynaston*, (in error) 7 Bro. P. C. 396.

[20.] If in an information in the nature of a *quo warranto*,^s as to corporate offices,^t judgment of ouster is upon any pleading,^u or even otherwise, as upon an entry of disclaimer,^v awarded against the defendant, costs also usually follow thereon;^w and so also against the relator,^x where judgment is given for the defendant. These proceedings are viewed in their consequences as of a civil kind, and are, subject only to a few exceptions, governed by the ordinary rules as to costs, as to amendments,^z security for costs,^a not proceeding to trial according to notice,^b and otherwise. Where the relator succeeds upon any issue^c he is allowed costs upon all; but if he does not proceed to trial in due time,^d the defendant will be entitled to apply for his costs of the day;^e not exceeding the 20% which is the penalty in the recognizance.^f Upon the rule being discharged, the costs thereon are in the discretion of the Court,^g and they are usually given as to an application which is frivolous and groundless, and known to the prosecutor as such.^h Upon these proceedings, and being in the Queen's Bench, the taxing officer is the master of the Crown Office. The practice is for

^s 9 Anne, c. 20, s. 4; *Rex v. Williams*, 1 W. Bla. 93; *Rex v. Oxford (Mayor, &c.)*, 1 Nev. and P. 474.

^t *Ren v. Hall*, 1 B. and C. 237; 2 D. and R. 341; *Ren v. Wallis*, 5 T. R. 375; *Rex v. M'Kay*, 5 B. and C. 640; 8 D. and R. 393.

^u 32 G. 3, c. 58, s. 1; *Rex v. Downes*, 1 T. R. 453.

^v 1 Gude (C. O.) Practice, 161.

^w 9 Anne, c. 20, s. 5; *Rex v. Amery*, 1 Anstr. 178.

^x *Rex v. Holt*, 2 Chit. 366.

^y *The King v. Francis*, 2 T. R. 484; *The King v. Pickerill*, 4 T. R. 809.

^z *Rex v. Phillips*, 1 Burr. 292; 1 Ld. Keny. 531.

^a *Rex v. Wynne*, 2 M. and S. 346; *Rex v. Day*; *Same v. Patteson*, 1 Dowl. 32.

^b *Rex v. Great Yarmouth*, (Mayor &c.) 5 B. and A. 531.

^c *The King v. Downes*, 1 T. R. 453.

^d *Anon. Sayer*, 130.

^e p. 69.

^f *Rex v. Howell*, East, 9 G. 2; Ca. temp. Ld. Hardw. 247; *Rex v. Morgan*, 2 Stra. 1042; 4 & 5 W. 3, c. 18, s. 2.

^g *Rex v. Carpenter*, 2 Stra. 1039; *Ibid. v. Kemp*, 1 East, 46, note.

Rex v. Lewis, 2 Burr. 780; 2 Ld. Keny. 497.

him to mark his *allocatur*, and sign judgment as to the costs upon the roll,¹ indorsed thus,—*e. g.*

“Allowed for costs 180%.”

A corporation has been held to be justified in point of law to discharge out of the borough funds,¹ the costs and expences of opposing these informations against the individual members;² and having for their object the impeachment of their title, or destruction of their own legal existence as a body. Where a *quo warranto* information is brought upon a defect cured by 1 Vict. c. 78,¹ the relator is not entitled to his costs; unless immediately after the passing of the act he discontinued his proceedings;³ and he is not entitled to any costs in such a case, where the judgment of the Court was upon a demurrer,⁴ or otherwise than on a discontinuance.

¹ *The King v. Pickerill*, 4 T. R. 809.

² 5 & 6 W. 4, c. 76, s. 92; *Woods v. Reed*, 2 Mee. and W. 777.

³ *Att. Gen. v. Mayor of Norwich*, 2 Myl. and Cr. 406; *Corporation of Dublin v. Attorney General*, 9 Bli. 396.

⁴ ss. 1, 20.

⁵ *Reg. v. Roberts*, 3 N. and P. 592.

⁶ *Ibid.* 3 N. and P. 295.

CHAPTER V.

Execution.

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| <ol style="list-style-type: none"> 1. Time of Issuing. 2. <i>Capias ad Satisfaciendum</i>—Charging in Execution. 3. Discharge under Small Debtors' Act. 4. Costs : Expenses of : Poundage. 5. Entry of Judgment : Rule in Common Pleas Office. 6. Effect of. 7. Interest. 8. Effect of <i>Ca. Sa.</i>, or Charging in Execution, or charge on Security. 9. Writ in the nature of <i>Elegit</i>. | <ol style="list-style-type: none"> 10. <i>Fieri Facias</i>. 11. Government Stock : other like Securities. 12. Removal of Judgments : Rules and Orders from Inferior Court ; (if Judge a Barrister of seven years standing). 13. Newspaper Recognizances. 14. <i>Levari Facias</i> : Beneficed Clergymen. 15. Relief and Powers under Insolvent Debtor's Act. 16. Costs by way of Special Damage. |
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[1.] Final judgment is considered as signed in the action,^a upon the *allocatur* of the costs being entered, and then delivered out^b by the taxing officer—the master. The common injunction from a Court of Equity stays all further^c proceedings ; but except when the right is so restricted, the right of and upon final judgment creates also that of execution.

[2.] A writ of *capias ad satisfaciendum* will not lie against a peer of England,^d Scotland,^e or Ireland ;^f nor a

^a 29 Car. 2, c. 3, s. 14 ; *Deemer v. Brooker*, 4 Dowl. 9 ; *Finch v. Brook*, 5 Dowl. 59.

^b *Blackburn v. Kymer*, 1 Marsh, 278 ; *Butler v. Bulheley*, 8 J. B. Moore, 104 ; 1 Bing. 233.

^c *Earnshaw v. Thornhill*, 18 Ves. jun., 488 ; *Bishton v. Birch*, 2 V. and B. 41 ; *Marsack v. Bailey*, 2 Sim. and Stu. 577.

^d *Walker v. Earl of Grosvenor*, 7 T. R. 171 ; *Forster v. Jackson*, Hob. 61.

^e *Digby v. Earl of Stirling*, 8 Bing. 55 ; 5 Anne, c. 8, Art. 23 ; *Milington (Lord) v. Portmore (Earl)*, 1 V. and B. 419.

^f *Coates v. Lord Hawarden*, 7 B. and C. 388 ; 39 & 40 G. 3, c. 67, Art. 5 ; *Robinson v. Rokeby (Lord)*, 8 Ves. jun. 601.

bishop;^g nor a peeress by birth,^h or creation;ⁱ nor even when so by marriage only,^j unless^k she has since married a commoner; nor against a member of the House of Commons;^l the Queen's domestic servants;^m or a foreign ambassador,ⁿ or their domestic^o servants; nor will it lie against a Quaker, or person *bond fide* professing the tenets of Quakers,^p although they may not be recognized as such by the general body, upon any judgment^r for great^s or small^t tithes, *modus*,^u composition,^w rate,^x or other ecclesiastical demand.^y

The party against whom the final judgment was awarded, becomes, by being arrested upon the above writ,^z in execution in the action; or, if already^a in custody of the sheriff, by its being lodged^b in his office by way of detainer. Where the defendant is in custody of the marshal^c in an action in the Queen's Bench, and in

^g *Rex v. Bishop of St. Asaph*, 1 Wils. 359.

^h *Countess of Rutland's case*, 6 Rep. 52; Moor, 765.

ⁱ Finch Law, 355; 1 Ventr. 298. ^j 48 E. 3, 30 b.

^k Owen, 81; Br. *nosme de Dignity*; Dy. 79 b; Co. Litt. 16.

^l *Catmer v. Knatchbull*, 7 T. R. 448; *Phillips v. Wellesley*, 1 Dowl. 9.

^m *Bartlett v. Hebbes*, 5 T. R. 686; *Aldridge v. Barry*, 3 Dowl. 450; *Byrn v. Dibdin*, 3 Dowl. 448; *Reynolds v. Pocock and wife*, 7 Dowl. 4; 4 M. and W. 371.

ⁿ 7 Anne, c. 12, s. 3; *Vivcash v. Becher*, 3 M. and S. 284.

^o *Novello v. Toogood*, 2 D. and R. 833; *Fisher v. Begret*, 2 Dowl. 279; *Hopkins v. De Roebeck*, 3 T. R. 79.

^p 5 & 6 W. 4, c. 74, s. 2; 1 & 2 Vict. cc. 5, 15; *Rex v. Freeman*, 2 Ld. Ken. 19.

^q 5 & 6 W. 4, c. 74, s. 2.

^r Com. Dig. *Dismes*, (G.)

^s *Ibid.* (G. 2.)

^t 13 Rep. 12.

^u *Bernard v. Evens*, 1 Lev. 24.

^x Lind. 185; Cod. Jud. Eccl. 739; 59 Geo. 3, c. 134, s. 14.

^y 50 Edw. 3, c. 1.

^z *Russen v. Lucas*, 1 C. and P. 153; *Deemer v. Brooker*, 3 Dowl. 576.

^a *Arundel v. Chitty*, 1 Dowl. 499; *Mackie v. Warren*, 5 Bing. 176; 2 M. and P. 279; *Barston v. Trutch*, 4 Dowl. 6; 5 Nev. and M. 109; 1 Har. and W. 321; 3 Ad. and Ell. 451.

^b *Owen v. Owen*, 2 B. and Ad. 805; *Williams v. Waring*, 1 Gale, 268; 4 Dowl. 200; 2 C. M. and R. 354.

27 Geo. 2, c. 17, (1754).

the same action,^d the mode of charging him in execution is by a side bar rule in term time;^e and three days before the end of it,^f for that officer to acknowledge the defendant in his custody, and on his doing so, for the plaintiff's attorney to enter a *committitur* on record^h in the Treasury of the Court; but where the defendant is not in custody in the same action, or where he is in the Fleet Prison, the practice is to sue out a writ of *habeas corpus ad satisfaciendum*,^k and returnable in term time,^l and for the gaoler to bring up the party into Court, and to be charged there in execution; on the back of this writ; one of the Masters makes an entry thereof;^m and upon this being done, the "charging in execution" becomes complete;ⁿ and the same course is adopted with respect to a plaintiff, *e. g.* when he is to be so charged for the costs of a nonsuit.^o

[3.] Where the debt in an action of debt,^p or the damages in other actions,^q and also in ejectment,^r as indorsed upon the writ of execution to be levied,^s or really recovered in the action;^t and though upon a *cognovit actionem*^u only, did not exceed 20*l.*;^v and the defendant has, as certified by the gaoler,^w been in execution

^d *Smith v. Sandys*, 5 Nev. and M. 59; *Fisher v. Stanhope*, 1 T. R. 464; *Cunningham v. Cogan*, 10 East, 46.

^e Tidd's Forms. Appendix, cxv, s. 25.

^f R. T. 2 Geo. 1, s. 2.

^g *Cunningham v. Cogan*, *suprà*.

^h R. E. 41 Geo. 3.

ⁱ *Smith v. Sandys*, 1 H. and W. 377; 5 Nev. and M. 59.

^k *Stochen v. Wedderburne*, 4 Scott, 570; *Whitmore v. Binns*, *Ib.* 571; *Reynolds v. Simmons*, 7 Dowl. 85.

^l Rule Mich. 1654, VII.

^m *Fox v. Jones*, 7 B. and C. 732; 1 M. and R. 570,

ⁿ *Green v. Foster*, 2 Dowl. 191.

^o *Furnival v. Stringer*, 5 Dowl. 195; 3 Scott, 551.

^p *Fogarty v. Smith*, 4 Dowl. 595; 1 H. and W. 644.

^q *Harris v. Parker*, 3 Dowl. 451; *Goodfellow v. Rollings*, 5 Dowl. 198; 3 Scott, 319; *Winter v. Elliott*, 3 Nev. and M. 315; 1 Ad. and Ell. 24.

^r *Doe d. Daffey v. Sinclair*, 4 Scott, 477; 5 Dowl. 615; 3 Bing. N. C. 778.

^s *Harris v. Parker*, 3 Dowl. 451.

^t *Smith v. Preston*, 2 H. and W. 93.

^u *Rathbone v. Fowler*, 3 M. and W. 137; 6 Dowl. 81.

^v 48 Geo. 3, c. 123, s. 1; *Thomson v. King*, 4 Dowl. 582.

^w Archbold's Country Attorney's Practice, p. 400.

thereon,^w and within the actual walls^x of a prison for one whole year,^y he may be discharged out of custody thereon, upon applying in term time^z to the Court of Law at Westminster in which the action is, for his discharge out of custody.^a The costs in the action are by the express terms of the act,^b excluded from the amount of the 20*l*. Where the judgment is in any other Court of Record,^c the application may be made to any one^d of the three Superior Courts of Law. If the discharge is unduly or fraudulently obtained, and upon any false suggestion of the circumstances, the defendant may, by rule of Court, be retaken and remanded to his former custody; but, except in this instance, no other writ of execution can ever issue, as to his person, upon the same judgment, nor will a *scire facias* lie thereon, for that purpose; but execution may issue in such and the same manner as if he had not ever been taken in execution; against his estate and effects, with the exception of his wearing apparel and bedding, and that of and for his family, and the necessary tools for his trade or occupation, and not exceeding in the whole the sum of 20*l*.^e

[4.] The costs and expenses of execution and poundage can only be levied as against the person in four cases, *e. g.* 1. In debt upon a bond with a penalty;^f 2. and so where, it is for the performance of covenants or conditions, and coming within the provisions of 8 & 9 W. 3, c. 11.^g 3. Upon a warrant of attorney to confess judgment, and containing in the defeasance, a proviso as to such a levy.^h 4. And upon a *cognovit actionem*, and also containing a similar proviso.ⁱ In these two first

^w *Venner v. Oxenham*, 6 Dowl. 766.

^x *Gilbert v. Pope*, 5 Dowl. 449; 2 M. and W. 311.

^y *Porkers v. Wilkins*, 7 Dowl. 152; 6 Scott, 893, and note *a. post*. ^z *Short v. Williams*, 4 Dowl. 357.

^a *Anon.* 1 Dowl. 150; *Venner v. Oxenham*, 6 Dowl. 766.

^b *Doe d. Ward*, 5 Dowl. 290.

^c *Masters v. White*, Q. B. 1838, MSS; *Fogarty v. Smith*, 4 Dowl. 595; 1 H. and W. 644.

^d 48 Geo. 3, c. 123, s. 1.

^e 48 Geo. 3, c. 123.

^f *Thornton v. Merredew*, 3 B. and P. 362.

^g s. 8; 1 Saund. 51, *in notis*.

^h *Atkinson v. Baynton*, 1 Hodges, 7; *Davis v. Gemperts*, 2 Nev. and M. 607; 2 Dowl. 407.

ⁱ *Rose v. Tomblinson*, 3 Dowl. 49.

cases, the whole levy is confined to the penalty;^j and in the two latter, it is restricted to that of the judgment.^k The above clause is usually in these words, *i. e.* "with costs of execution, sheriff's poundage, officers' fee and all other incidental expenses." The course is to indorse upon the writ of execution,^l "Levy l. for debt and costs, and interest thereon from the day of , 18 ." This interest is computed from the signing of final judgment, and at the rate of 4 per centum per annum.^m

[5.] In order to affect lands, tenements, and hereditamentsⁿ as to purchasers, mortgagees, or creditors; there must be a similar entry^o and re-entry made; and in the Common Pleas Office; and where the lands lie in Middlesex,^p the West Riding of Yorkshire,^q the North Riding,^r or the East Riding and the town and county of Kingston-upon-Hull,^s there must also be a memorial^t entered in the Registry Office; but these latter provisions do not^u apply to judgments or rules against a clergyman having an ecclesiastical benefice, for they are not *per se*,^v a charge upon it.

[6.] When these proceedings as to entry, and when required, as to registry, have been effected; the judgment or rule, as the case may be, stands as a charge upon the lands, tenements, rectories, advowsons, tithes, rents and hereditaments, and including those of a copyhold or customary tenure, of or to which the party, at the time of the entry or afterwards, is seised, possessed, or entitled to, for any estate or interest whatever at law or in equity, in possession, reversion, remainder or expectancy, or over which he has any disposing power; without the

^j *Amery v. Smalridge*, 2 W. Bla. 760; 6 Mod. 101.

^k *Arnell v. Weatherby*, 3 Dowl. 464; 1 Saund. 58, note.

^l *Williams v. Waring*, 1 Gale, 268; 4 Dowl. 200; 2 C. M. and R. 354; *Plevin v. Marshall*, 2 Dowl. 743.

^m 1 & 2 Vict. c. 110, s. 17.

ⁿ s. 19.

^o p. 110; 2 Vict. c. 11, ss. 3, 4.

^p 2 & 3 Anne, c. 4.

^q 7 Anne, c. 20.

^r 8 Geo. 2, c. 6.

^s 6 Anne, c. 35.

^t *Honeycomb v. Waldron*, 2 Stra. 1064.

^u *Cottle v. Warrington*, 5 B. and Ad. 447; 2 Nev. and M. 227.

^v *Moore v. Ramsden*, 3 Nev. and P. 180.

assent of any other person of exercising for his own benefit; and binds him and all persons claiming under him, after such judgment, and the issue of his body, and all other persons which he might, without the assent of any other person, cut off, and debar, from any remainder, reversion, or other interest, in or out of any part thereof. In order that the judgment creditor may gain a preference in case of bankruptcy, the entering up must have been made for one year previously; at the expiration of one year from the time of entering up such judgment; or if entered up before October 1st, 1838, then from that period, the judgment creditor has the same remedy against them, or any part, as he would have upon an agreement made by the debtor, and under his hand by writing, for charging them with the amount thereof, and interest thereon;^w but this remedy is not available as against a purchaser for valuable consideration, and without notice.^x

[7.] A judgment debt carries interest thereon, at the rate of four per centum per annum, from the 1st of October 1838,^y if then existing, or if since, then from its being entered up, and until it is satisfied; and writs of execution may issue thereon.^z

[8.] It is necessary, before treating of the present writs of execution, as given by the recent act,^a to observe, that if after the judgment creditor has obtained a charge, or become entitled to the benefit of any security whatever; and before the property so charged or secured has been converted into money, or realized, and the produce thereof applied towards payment of the judgment debt; he causes the judgment debtor to be taken or charged in execution thereon; the former is to be deemed to, and to be taken to have relinquished all right and title to the benefit of, and to have forfeited it.^b

[9.] The writ of execution given under the provisions^c of the above act, with reference to the realty, is a writ in the nature of the former writ of *elegit*,^d and under it,

^w 1 & 2 Vict. c. 110, s. 13.

^x *Walkwyn v. Lee*, 9 Ves. 24; 1 Ball and Beatty, 171.

^y 1 & 2 Vict. c. 110, s. 17.

^z s. 20.

^a 1 & 2 Vict. c. 110.

^b s. 16.

^c ss. 11, 12, 20.

^d Statute Westminster 2d, 13 Edw. 1, c. 18; *Morris v. Jones*, 2 B. and C. 232; 3 D. & R. 603; 2 Saund. 68, c. f.

the sheriff is to make and deliver execution to the judgment creditor, of the lands, tenements, and hereditaments, and including those of a copyhold or customary tenure, and which the judgment debtor or any person in trust for him, was seised or possessed of at the time of entering the judgment or afterwards, and over which he has any disposing power, and which he may, without the assent of any other person, exercise for his own benefit; to hold as tenant by *elegit* as to the whole, and subject to an account thereof in the Court, out of which it is issued. In the case of copyhold, or customary lands, the judgment creditor is liable, and required to render to the lord of the manor, or other person entitled thereto, such payments and services, as the judgment debtor must otherwise have rendered, and is entitled to hold the same, until such payments, and the value of such services, and the amount of the judgments,^e and interest thereon,^f is levied. But as against purchasers, mortgagees, or creditors, becoming such before 8 October 1st 1838, this writ does not operate upon copyhold or customary lands, or on others: otherwise than as a strict writ of *elegit*, *i. e.* as to one moiety only.^h

[10.] The writ of *feri facias*,ⁱ remains, but with extended powers^j as to the personalty,^k chattels real and personal, and *choses in action*. It enables the seizure of Bank of England notes, country bank notes, cheques upon bankers, bills of exchange, promissory notes, bonds, specialties, and other securities for money belonging to the judgment debtor; where money or bank notes are seized, the sheriff is to deliver over to the judgment creditor a sufficient part; where cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money are seized, the sheriff is to deliver

^e *Williams v. Waring*, 4 Dowl. 200; 1 Gale, 268; *Plevin v. Henshall*, 2 Dowl. 743; *Evans v. Pugh*, 2 Dowl. 360; *Tilby v. Best*, 16 East, 163.

^f p. 120.

^g 1 & 2 Vict. c. 110, s. 11.

^h p. 120, note d.

ⁱ *Johnson v. Streete*, Comb. 191; *Britton v. Cole*, 12 Mod. 175; *Francis v. Nash*, Cases temp. Hard. 53.

^j 1 & 2 Vict. c. 110, s. 12.

^k *Samuel v. Duke*, 3 M. and W. 622; 6 Dowl. 536; 8 Ad. and El. 272; *Bayley v. Potts*, 3 Nev. and P. 365.

them to the judgment creditor, as a security for the amount thereby directed to be levied, or what remains to be so; and the sheriff may receive payment thereof, and which being made, and though without suit, is a discharge to the judgment debtor; and in this event the sheriff is to pay over to the judgment creditor the money to be recovered, or sufficient to discharge the amount thereby directed to be levied: when the time of payment arrives, and it is not made, the practice is, for the judgment creditor, and two sufficient sureties to join in a security for indemnifying the sheriff from all costs and expences to be incurred in his prosecuting an action on such security against the party thereon, and intended to be sued, or to which he may have become liable in consequence thereof. If this security is given, the sheriff in his own name sues the party who is so liable, and the payment of the amount by him, or its recovery or levy by execution, discharges the judgment-debtor to the amount thereof. The sheriff is, out of such payment, recovery, or levy, to pay the judgment creditor the money recovered, or sufficient to discharge the amount thereby directed to be levied; and he then deducts his poundage,¹ the expences of the sale,^m and of the bond, and pays over any surplus to the judgment debtor.

[11.] The recent actⁿ also provides in favour of judgment creditors, a power as to government stock, funds, annuities, stock and shares of and in any public company, though not incorporated, and standing in the name of the judgment debtor or of another in trust for him, of having it under a judge's order, charged with the payment of the amount recovered by such judgment, and interest thereon, and of having the same remedies as if made by the judgment debtor, and of taking at the end of six calendar months from the date of the order, proceedings to obtain the benefit of such charge.^o

The course in practice is this.—The order is granted *ex parte*, and to shew cause at a time mentioned therein,

¹ *Bayley v. Potts*, 3 Nev. and P. 365;

^m *Davies v. Griffith*, 7 Dowl. 204; 4 M. and W. 377.

ⁿ 1 & 2 Vict. c. 110, s. 14; *Robinson v. Peace*, 7 Dowl. 93.

^o s. 14; *Cumming v. Prescott*, 2 Y. and C. 488; *Robinson v. Peace*, *supra*.

and in the meantime, if made as to government stock, funds or annuities, it restrains the governor and company of the Bank of England from permitting a transfer thereof; and if of stock, or shares in a public company, it restrains such public company from any transfer thereof; if cause is not shewn by such judgment debtor, and within such limited time, and notice of the order is proved before the judge, it becomes absolute; a disposition of it in the meantime by the judgment debtor is as against such judgment creditor, invalid and ineffectual. If after notice of the order to the person to be restrained thereby, or in case of a corporation, to any authorised agent thereof, and before it is discharged or made absolute, they permit a transfer; they become liable to the judgment creditor for the value or amount of the property so charged and so transferred; and the judge upon the application of the judgment debtor or other person interested, may discharge or vary the order, and award costs thereon.^p

[12.] A final judgment, rule, or order, may be removed out of an inferior Court of Record and into a Superior Court of Law at Westminster, and for a more extended execution, where a barrister of seven years' standing, acted in the inferior court, as the judge, assessor, or assistant in the trial of causes;^q *e. g.* the Lord Mayor's Court of London, the Sheriffs' Court of London, the Palace Court, and the Court of Passage at Liverpool. In such a case, the Superior Court or any one of the fifteen Judges, may, upon the application of the judgment creditor, and on production of the record of the judgment, or of a rule or order for any costs, charges, or expences, under its seal, and also the signature of the proper officer there, direct the removal thereof into such Superior Court; and it has thereupon and immediately, the same force, charge, and effect, as a judgment or rule in the Superior Court; and all the like proceedings may be taken thereon, and all the reasonable costs and charges attendant upon such application and removal, are recoverable as if part of such judgment or rule. But in such a case, the lands, tenements, and hereditaments, are, as to mortgagees and creditors, only affected upon a writ of execution being actually put into the hands of the sheriff or other officer appointed to execute it.

^p 1 & 2 Vict. c. 110, s. 14.

^q s. 22.

[13.] In actions against the proprietors, publishers, or printers of newspapers, pamphlets, and papers,^r for libels contained therein, if damages and costs are recovered against them; the plaintiff can apply to the Court of Exchequer to allow proceedings to be taken in favour of the plaintiff, and against the sureties, in the recognizance of 4(N). The practice in such a case is this;^s an affidavit is made, clearly shewing that the applicant is entitled to have execution against the defendant upon such judgment, and that he has not been able to procure satisfaction by writs of execution, under 1 & 2 Viet. c. 110,^t and upon this an extent^u against the sureties is ordered.

[14.] Where the judgment debtor is a beneficed clergyman, this fact must be returned upon the writ of *fiery facias* by the sheriff, and thereupon a writ of *levari facias* issues to the bishop of the diocese in which the benefice is, and in order to its sequestration; this proceeding^v takes effect from its publication at the church door,^w and upon the surplus revenue, after providing for the church service and the repairs.^x

[15.] Where the judgment debtor is committed to prison, and in execution for any debt, damages, costs, or sums of money; or committed there for or by reason of any contempt of Court, for non-payment of any sum of money, or of costs, taxed or untaxed, and either ordered to be paid, or to the payment of which such prisoner would be liable in purging such contempt, or in any manner in consequence of or by reason thereof; and does not within twenty-one days make satisfaction to the creditor at whose suit he was committed or charged, or to the person entitled to such money, or to such payment; such creditor or person so entitled may, in a summary way, and by his petition signed by him, apply for an order, vesting in the provisional assignee, and according to the provisions of the act, the real and personal estate

^r 11 G. 4, and 1 W. 4, c. 73, s. 1.

^s *Pennell v. Thompson*, 3 Tyr. 823.

^t pp. 115, 120, 121.

^u West on Extents,

^v *Wait v. Bishop*, 3 Dowl. 234; *Phillips v. Berkeley*, 5 Dowl. 279.

^w 1 Vict. c. 45.

^x *Hubbard v. Beckford*, 1 Hagg. 307; *Campbell v. Whitehead*, Consistory, 6 Dec. 1820.

and effects of the prisoner. The petition for this purpose must state the time and place of such charging in execution or commitment, the amount of such debt or sum of money, and the judgment creditor's desire for the prisoner to file a schedule of his property, and to be brought up and dealt with there according to the act. The petition must be supported by evidence upon affidavit or otherwise, and as the Court may require; the petition and the evidence are filed; and under the provisions of the act, the Court is to order the filing of the schedule, and the prisoner to be brought up and dealt with accordingly.

[16.] If a party is illegally arrested^y upon a writ of *capias* issued by a judge's order upon mesne process, or is discharged out of custody on the ground of being privileged from arrest,^z or a writ of *capias ad satisfaciendum*,^a or other process of execution^b is set aside for irregularity, or the debtor is discharged out of custody thereon; the usual course is^c for the judge or the court to allow him his costs, provided he undertakes not to bring any action; but he cannot be compelled^d so to undertake. So where the debtor is arrested for more than is recovered,^e or the recovery is for an amount less than 20*l.*,^f or there is not any *bond fide* ground for believing that the defendant would otherwise abscond,^g an action on the case will lie, and with special damage. In trespass *quare clausum fregit* for the mesne profits, the taxed costs only of the ejectment, if it was defended,^h can be recovered. But upon a judgment by default against the casual ejector,ⁱ all the necessary expences therein are recoverable; and in such an action the costs of reversing in a Court of Error a judgment for the defendant in the

^y 1 & 2 Vict. c. 110, s. 3.

^z p. 115.

^a pp. 104, 115.

^b pp. 120, 121.

^c *Smart v. Johnson*, 6 Dowl. 90; *Blissett v. Tennant*, C. P. 1838, MSS.; *Jones v. Smith*, 3 M. and W. 526.

^d *Ex parte Hill*, 3 C. and P. 225.

^e 43 G. 3, c. 46, s. 3.

^f 1 & 2 Vict. c. 110, s. 3.

^g *Ibid.*

^h *Doe v. Hare*, 2 Dowl. 245; 2 C. and M. 145; 4 Tyr. 29.

ⁱ *Doe v. Huddart*, 2 C. M. and R. 316; 4 Dowl. 437; 1 Gale, 260.

ejectment may be obtained.] In each of these cases the special damages in the declaration must carefully^{*} specify the costs,¹ their amount, and how and for what they were recovered. An averment "forced to pay them" merely^m includes so much of the bill of costs of the attorney for the lessor of the plaintiff, as has been actually paid to or by him before the commencement of the action in trespass. The proper form is, "become and is liable to pay;"ⁿ and under which the whole bill may be recovered as special damage by reason of such liability. Where special damage is so alleged in the declaration, and it is essential to the maintenance of the action, it should, according to a late case, be traversed by a special plea:^o and upon a warranty as to a horse being made, and an action brought upon it; the costs of defending^p an action upon it by a second vendor, and after notice, is recoverable against the first vendor.^q

¹ *Nowell v. Roake*, 7 B. and C. 404; 1 M. and R. 170.

^{*} 1 Saund. 243 c; Buller's Nisi Prius, 7; *Hartley v. Herring*, 8 T. R. 130.

¹ *Hathaway v. Hanson*, 1 Campb. 151.

^m *Pritchett v. Boevey*, 1 C. and M. 775.

ⁿ *Taylor v. Higgins*, 3 East, 169; *Dixon v. Bell*, 5 M. and S. 198; 1 Stark. 287.

^o *Perring v. Harris*, 2 M. and Rob. 5.

^p *Lewis v. Peat*, 2 Marsh, 431; 7 Taunt. 153; S. C.

^q *Wrightup v. Chamberlain*, 7 Scott, 598.

CHAP. VI.

Quasi Superior Courts.

1. Petty Bag. 2. Common Pleas at Lancaster. 3. Durham Court of Pleas.

[1.] The law side of the Court of Chancery, or as it is more usually termed, the Petty Bag Office, proceeds according to the course of the common law,^a and includes the Petty Bag and the Hanaper Offices. Its principal jurisdiction is at the suit of, and against officers of that Court;^b its proceedings are not governed by the Uniformity of Process Act,^c or the New Rules as to Pleading.^d Before an issue in fact is joined, and in issues of law, or by the record, all orders made in the cause are by the Master of the Rolls, and he has the power to award costs; the taxation of them is effected by his principal secretary, and the bill of costs is thus headed, "In the Petty Bag Office." As soon as an issue in fact is joined, the issue is transmitted to the Queen's Bench, and the trial, judgment, and taxation of costs thereon, take place in that Court.^e In such a case, the bill of costs, though made out in an entire form, is headed as above, with respect to the charges in the Petty Bag Office; and "In the Queen's Bench," as to those which took place in that Court. Upon an issue in law being determined in Chancery, or a trial by the record taking place there, error lies upon the judgment into the Court of Queen's Bench.^d But on proceedings in partition, on a traverse, or upon a petition of right, error lies at once into the House of Lords.^f The proceedings against the sureties of a receiver upon their recognizance,^g enrolled

^a Hob. 63.

^b *Wainwright v. Smith*, 2 Russ. 568.

^c *Jefferson v. Dawson*, 1 Mod. 29.

^d 2 Bac. Abr. 45; 2 Bl. Comm. 49.

^e 20 C. 2, Jurisd. 12, 3, 4.

^f *Smith's Practice*, p. 634.

in the Enrolment Office,^g must be by writ of *scire facias*^h thereon, brought in this Court,ⁱ and in the name of the Master of the Rolls, and of the Master in Chancery who is named therein ;^j proceedings must also be commenced in this Court, upon the bond of 40*l.* given to the sheriff, upon an attachment for want of an appearance, or answer,^k and also upon that given as a security for costs ;^l so also upon the bond of an auctioneer with respect to the sale of timber,^m or of old materials,ⁿ or by the purchaser of an estate.^o The action is "in debt," and in the names of the two senior Six Clerks, or of the sheriff, whichever is named therein as the obligee ;^p and the same course is adopted, in reference to a bond taken by the sheriff, under a writ of *ne exeat regno*. In these cases, the bail have not any power of rendering the defendant to prison, in their own discharge.^q An application made by a defendant in order to stay proceedings brought upon such a security, must be directed to the equity^r side of this Court ; the terms imposed usually are, "the payment of the debt really due, of all the costs in the action, and of the application."^s The writ of *scire facias* commands the sheriff of the county "to summon the sureties to appear in this Court on the day of , to shew cause why execution should not be levied against them, for the sum of *l.*, the penalty of the obligation, and delivered to the Master of the Rolls and the Master in Chancery or other obliges.^t To this writ

^g *i. e.* in Middlesex.

^h Smith's Practice, p. 635, for it becomes a record ; Williams' Executors, pp. 662-3.

ⁱ *Grant v. Stone*, Vern. 313.

^j Smith's Practice, pp. 634, 647.

^k *Ibid.* 126.

^l *Ibid.* 558 ; *Beddell v. Page*, 2 Sim. 224.

^m Smith's Practice, pp. 223-4.

ⁿ *Ibid.* 220 ; *Fournier v. Duchess of Kent*, MS. 19th July, 1827, V. C.

^o Smith's Practice, pp. 227-8.

^p *Anon.* 2 Atkins, 507.

^q *Stapylton v. Peill*, 19 Ves. 615.

^r *Walker v. Wild*, 1 Madd. 528 ; *Musgrave v. Mady*, 1 Mer. 49 ; *Ullen v. Ullen*, *Ibid.* 31 ; *Sidden v. Lediard*, MS. case Smith's Practice, p. 648.

^s *Grant v. Stone*, 1 Vern. 313.

^t *Sidden v. Lediard*, *suprà*.

and also to the actions upon the bonds above mentioned, the defendants have a right to appear and plead.^u Upon a final judgment, and an award of execution against the sureties, they are liable to the costs thereon;^v and if an issue in fact was joined, then also to the costs incurred in the Court of Queen's Bench.^w The remedy for the sureties, against the principal for the recovery of an indemnity, is in this Court, and by either an action "of debt," or of "trespass on the case upon promises," or this Court will, upon the former indemnifying the obligees as to the costs,^x allow an action to be brought here in the names of the latter, and upon the recognizance and against the principal,^y when this security has been absolutely satisfied, the Master of the Rolls will order the record of it to be vacated. The registrar draws up the order upon an office copy of the recognizance. The secretary of the Master of the Rolls marks the order with his initials, and on filing it at the Inrolment Office, the recognizance is vacated by an entry made there, in this form:—"Vacated pursuant to an order bearing date . . ."^z

[2.] The Court of Common Pleas at Lancaster^a has jurisdiction over all civil actions. At the sittings in the county palatine, the Chief Judge is styled "the Chief Justice," and the other is named as "one of the Justices."^b The Judges of the Superior Courts of Law at Westminster, are also Justices.^c The Sittings are held during the assize time, and at Lancaster, for the northern division; and by adjournment at Liverpool for the southern division.^d The fees^e of the officers, and attorneys of the Court, are regulated according to tables published under its authority, and the rules, orders, and regulations of the three Superior Courts of Law at Westminster,^f as to framing, regulating, and

^u *Sidden v. Lediard, supra.* ^v 3 & 4 W. 4, c. 42, s. 34.

^w p. 47.

^x *Sidden v. Lediard, supra.*

^y *Smith's Practice*, pp. 558, 634.

^z *Ibid.* pp. 558, 634, 652.

^a 4 & 5 W. 4, c. 62, s. 1.

^b s. 24; *Terns v. Fitzhugh*, 3 Dowl. 278.

^c *Wareing's Practice*, p. 17.

^d Order in Council, 25th June, 1835.

^e 4 & 5 W. 3, c. 62, s. 25; *Wareing's Practice*, p. 322.

^f p. 46.

amending the proceedings, practice, and pleadings prevail here.⁸ The costs of preparing pleadings here, are the same as in those Courts;^h and where, from the party not residing within the county palatine, its rule cannot be enforced, it may, upon a certificate thereof by the prothonotary, or his deputy, and an affidavit as to the above facts, be made a rule of any one of such Superior Courts.ⁱ Upon issue being joined here, the facts may, under an order of one of its Judges, be stated in a special case, and for the opinion of one of such Superior Courts.^k The entering and transcribing of pleadings, judgments and other proceedings are the same as in such Courts;^l and so also the rules as to applications for the admission in evidence of written or printed documents, or copies of them, and as to the costs thereon and thereof.^m Applications as to rules for a new trial, setting aside a nonsuit, or entering a verdict, may be made to any one of such Superior Courts.ⁿ Where after final judgment, the debtor removes his person or chattels out of the county palatine, any of such three Courts may, on a certificate from the prothonotary or his deputy, as to the amount obtained thereby, issue writs of execution^o for the amount of the judgment and the costs thereon, and of the certificate—and the same as if they had been recovered in the Court above.^p The service of writs of *subpoena*^q issued out of this Court is made valid at any place in England or Wales; provided^r the reasonable and sufficient expences^s of coming and attending to give evidence, and of returning therefrom, were tendered at the time of service; and upon default being made, and a certificate thereof being transmitted to the Court of Queen's Bench, that Court may proceed thereon, as if such writ issued therefrom.^t

⁸ s. 34.^h ss. 17, 35.ⁱ s. 32.^k s. 16.^l p. 45.^m s. 17.

ⁿ s. 26; but not to enter up a verdict *non obstante veredicto*. *Potter v. Moss*, 1 C. M. and R. 848; 5 Tyr. 513; 3 Dowl. 432; or to set aside an award. *Terns v. Fitzhugh*, 3 Dowl. 278; 1 C. M. and R. 597.

^o s. 31.^p p. 115.^q 4 & 5 W. 4, c. 62, s. 29.^r s. 30.^s p. 20.^t p. 107.

The remedies, authorities, and provisions of the recent act,^v and as regards the judgments and proceedings thereon, apply to this Court;^v and every judgment debt existing here, bears interest at the rate of 4 per cent.^w

In order to affect lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, a memorandum or minute^x containing the name, the usual or last known place of abode; the title, trade, or profession of the plaintiff and defendant; the date of signing judgment; and the amount of the debt, damages, and costs recovered, must be left with the deputy prothonotary, and at his office;^y it is then his duty to enter the same particulars in a book in alphabetical order, and by the name of the person whose estate is intended to be affected thereby.

Final judgments, and rules and orders made in the Court of Passage at Liverpool, and the Borough Court at Preston; and for the payment of any "costs, charges, or expences," may, by an order of a Judge of the above Court be removed into the same; and have thereupon the force, charge, and effect of a judgment here, and all the reasonable costs and charges attending such application and removal are recoverable as if part thereof. But they do not affect lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, until a writ of execution thereon is actually put into the hands of the sheriff.^z

[3.] The practice and proceedings in the Court of Pleas of the county palatine of Durham and Sadberge, are now in a main degree assimilated to those in the three Courts of Law at Westminster.^a The costs for preparing pleadings in actions here, are by express enactment made the same as those of a like description in the Superior Courts.^b Provisions are made as to the costs with respect to the admission upon the trial of written and printed documents, and copies;^c taxation of costs;^d costs on paying money into Court;^e fees to

^v 1 & 2 Vict. c. 110.

^w s. 17.

^y In Preston.

^a 2 Vict. c. 16.

^c s. 15.

^e s. 21.

^v s. 21.

^x s. 21.

^z s. 22.

^b s. 32.

^d s. 19.

the officers;^f costs on motions for new trials in the Superior Courts;^g on removal of judgments;^h removal of causes;ⁱ on writs of false judgment;^k and as to the expences of witnesses;^l and any rule of Court made here, may be made a rule of any of the Superior Courts of Law at Westminster.^m

^f s. 22.

^h s. 28.

^k s. 34.

^m s. 29.

^g s. 24.

ⁱ s. 33.

^l s. 27.

CHAPTER VII.

Proceedings in Error.

1. Exchequer Chamber. 2. House of Lords.

[1.] The Court of Exchequer Chamber at Westminster consists of ten judges of the three Superior Courts of Law; and every writ of error upon a final judgment given in those Courts, and though as to a judgment upon a matter of law in the Petty Bag Office in Chancery,^a is returnable and heard here.^b In order to stay proceedings in the Court below, during the pendency of the writ of error; the plaintiff in error must, with two sureties, enter into a recognizance for the payment on an affirmance here of the debt and costs awarded by the judgment, and also those upon the delay, by reason of the writ.^c In ejectment the recognizance is taken in double the yearly value of the land, and also in double the amount of the costs in the Court below.^d In other actions, it is in double the aggregate amount recovered by the judgment,^e unless in the case of a penalty, as a bond with a condition; for here it is in double the sum really due, and also in double the costs.^f Amendments in the writ of error, for variances from the record,^g are made by order of the Court of Error, or one of its judges, and without costs.^h The fact of the plaintiff in error being a lunatic, is not any ground for compelling

^a p. 127.

^b 11 G. 4, and 1 W. 4, c. 70, s. 8.

^c 3 Jac. 1, c. 8; 6 G. 4, c. 96.

^d R. H. 2 W. 4, (27).

^e (26).

^f *Moor v. Lynch*, 1 Wils. 213; *Dixon v. Dixon*, 2 B. and P. 443; *Reed v. Cooper*, 5 Taunt. 320.

^g 5 G. 1, c. 13.

^h *Gardner v. Merrett*, 2 Stra. 902; 2 Ld. Raym. 1587.

him to give security for costs;¹ but where he resides out of the jurisdiction, such security will be ordered.^j

An assignment of errors may be amended on the terms of paying costs to the defendant in error;^k and the latter is always entitled to costs upon the quashing,^k discontinuance,^l or *non pros* of a writ of error,^m after the transcript is carried over; and, in the two latter cases also to interest.ⁿ

Upon issue in error being joined, the plaintiff in error must deliver to the judges of the senior of the two Courts, and sitting there, five copies of the error books;^o and the defendant in error must deliver the like number to the judges of the junior of such two Courts;^p and if either makes default therein, he cannot be heard upon any argument without making payment, or a deposit for the five additional copies.^q

If error upon a judgment in ejectment,^r and brought upon a judgment in the Court below, and for the plaintiff therein; where there is in the Court of Error an affirmance, discontinuance, or a *non pros*, the Court below awards a writ of inquiry as to the mesne profits, and also as to the damages, by way of waste. Upon the return of this writ, final judgment is given there, as to such mesne profits, and so found upon the writ of inquiry; and all the costs,^r and also for the interest,^s and upon this final judgment, the principal and his sureties in the recognizance become liable to be sued for the whole

¹ *Steel v. Allan*, 2 B. & P. 437.

^j *Lewis v. Owens*, 5 B. and A. 265.

^k *Marret and Gardiner*, Fitzg. 268.

^l *Mc Namara v. Fisher*, 8 T. R. 302.

^m 3 Hen. 7, c. 10; 8 & 9 W. 3, c. 11, s. 2.

ⁿ *Salt v. Richards*, 7 East, 111; 3 Smith, 121; *Wilkinson v. Malin*, 1 Dowl. 628; 1 C. and M. 240.

^o 3 & 4 W. 4, c. 42, s. 30; *Burn v. Carvalho*, 4 Nev. and M. 893; 1 Ad. and El. 895; *Levy v. Langridge*, 4 M. and W. 337.

^p R. H. 4 W. 4 (15); *Best v. Prior*, 2 Dowl. 189.

^q 11 G. 4, and 1 W. 4, c. 70, s. 8.

^r *Darker v. Darker*, 2 Dowl. 88; *Sandall v. Bennett*, 4 Nev. and M. 89; 1 Ad. and El. 204.

^s 16 & 17 Car. 2, c. 8, s. 4; *Francis v. Doe dem. Harvey*, 7 Dowl. 523; 5 M. and W. 273.

^t 3 & 4 W. 4, c. 42, s. 30; 1 & 2 Vict. c. 110, s. 17.

amount awarded thereby.^t In other actions, if the judgment in the Court below was upon a verdict for the plaintiff there, he is, upon an affirmance in the Court of Error, entitled to double costs;^u but only to single costs if the writ of error was sued out after execution below had or levied.^v The above provision extends even to cases where costs were not recovered in the Court below:^w and in all cases of a discontinuance,^x *non pros* after the transcript is carried over,^y or affirmance,^z (though in *formedon*,) the defendant in error recovers his costs,^a for the delay of execution, if there be such,^b and also interest.^c But upon a *non pros*, entered before the transcript is carried over, there are not any costs, damages, or interest, for in this case there is not yet really any "cause in error."^d The provisions as to double costs and damages do not apply, where the writ of error is sued out in replevin by an avowant or cognizant.^e

An executor or administrator bringing a writ of error upon a judgment against the testator or intestate, is not held liable to any costs in error;^f but he becomes liable in a writ of error brought upon a *devastavit*,^g or upon and after a judgment as to the debt and damages; and also as to the costs *de bonis propriis*.^h

^t *Doe v. Reynolds*, 1 M. and S. 247.

^u 13 Car. 2, stat. 2, c. 2, s. 10; *Shepherd v. Mackreth*, 2 H. Bla. 284; *Baring v. Christie*, 5 East, 545; 2 Smith, 142; *Francis v. Doe d. Harvey*, 7 Dowl. 523; 5 M. and W. 273.

^v *Earl of Pembroke v. Bostock*, Cro. Car. 173; *Ricketts v. Lewis*, 1 B. and Ad. 197; *Wright v. Fairfield*, 2 B. and Ad. 959.

^w *Bishop of Lincoln v. Wulforston*, 3 Burr. 1504.

^x 8 & 9 W. 3, c. 11, s. 2.

^y Page 134.

^z 2 Saund. 101, *x. y.*; *Ferguson v. Rawlinson*, Andr. 113; 2 Stra. 1084; *Cockerell v. Cholmeley*, 10 B. and C. 564.

^a 3 Hen. 7, c. 10; 19 Hen. 7, c. 20.

^b *Bowton v. Nicholls*, Cro. Car. 401.

^c Page 134; *Golding v. Dias*, 10 East, 2.

^d *Salt v. Richards*, 7 East, 111; 3 Smith, 121.

^e *Golding v. Dias*, 10 East, 2.

^f *Legg v. Richards*, 1 Mod. 77; 1 Ventr. 167; 3 Lev. 375.

^g *Saltern v. Wynne*, 2 Stra. 1072; Cases temp. Ld. Hardw. 367.

^h *Williams v. Riley*, 1 H. Bla. 566.

Under the statute 11 G. 4, and 1 W. 4, c. 70,ⁱ the Court of Error is to give the judgment when in affirmation of the judgment in the Court below, together with such costs as they shall think right;^j and upon the record being returned to the Court below, that Court is to award execution:^k and the same practice takes place with reference to a reversal of the judgment in the Court below, in which event there are not any costs "in error" for either party;^l but the plaintiff in error has judgment given for him in the action in the "Court below," and also his costs therein,^m and including those as to a motion there to arrest the judgment.ⁿ

In error from the Exchequer of Pleas to the Exchequer Chamber, the costs in error are taxed by the masters of the former Court,^o and in the same manner as costs are taxed upon a bill of exceptions.^p

[2.] The House of Lords is the dernier Court of Error in this realm; and writs of error lie here from the Court of Exchequer Chamber.^q The statutes relating to writs of error do not, in a direct sense, relate to this tribunal; and the costs upon such writs, when returnable and heard here, are in the discretion of the House.^r They commonly, in giving their judgment as to the costs thereon, adopt, as their guide, the spirit^s of the above statutes. If two Courts have been of the same opinion on any point, and judgment is affirmed here, the costs are given in their judgment;^t and the House commonly

ⁱ s. 8.

^j *Beale v. Thompson*, 2 M. and S. 249.

^k Reg. Gen. Hil. 4, W. 4, r. 1, s. 16.

^l 2 Saund. 101; *Wyvill v. Stapleton*, 1 Stra. 617.

^m *Gildart v. Gladstone*, 12 East, 668; *Swift v. Bottom*, 1 D. and R. 183.

ⁿ *Adams v. Meredew*, 3 Y. and J. 419.

^o Reg. Gen. Mich. T. 2 W. 4, Exch. Cham.; 1 C. and M. 466; 2 C. and J. 685; 2 Tyr. 761; 2 Dowl. 138; 3 M. and Scott, 298.

^p *Attorney General v. Key*, 2 C. and J. 10.

^q 11 G. 4, and 1 W. 4, c. 70, s. 8.

^r *Mandeville v. Lord Garrick*, 3 Ridgw. 373; *Bodily v. Belamy*, 2 Burr. 1097; *Beale v. Thompson*, 2 M. and S. 249.

^s *Myddleton v. Croft*, Andr. 60; *Doran v. O'Reilly*, 5 Dow, 233.

^t *Duvergier v. Fellowes*, 1 Clark and Fin. 39.

names therein the specific^u amount of costs to be allowed. But if they do not adopt that practice, the clerk of the parliaments, or the clerk assistant, proceeds in a taxation, and delivers out to the party in whose favour the judgment was, his certificate, and with the amount of the costs as taxed, expressed therein.^v In a late case,^w where the respondent did not appear to support the judgment of the Court below, the House held the appellant was not entitled to have such judgment reversed with costs, except under the particular circumstances of the case, such as fraud in the respondent; and in the case in question the reversal was ordered to be "without costs."

^u *Per Lord Ellenborough, C. J. in Beale v. Thompson, supra.*
"The practice of the House of Lords is to give a sum in gross, in their discretion."

^v Standing Orders, No. 215. 3d April, 1835; 7 & 8 G. 4, c. 64.

^w *Hamilton v. Littlejohn*, 4 C. and F. 20.

CHAPTER VIII.

Statutes and Practical Forms.

STATUTES.

6 EDW. 1, c. 1.

Several actions wherein damages shall be recovered.

Sect. 2.—The demandant may recover against the tenant the costs of his writ purchased, together with the damages aforesaid. And this act shall hold place in all cases where the party is to recover damages.^a

3 HEN. 7, c. 10.

Costs &c., awarded to the plaintiff, where the defendant sueth a writ of error.

If any defendant or tenant, defendants or tenants, or if any other that shall be bound by the said judgement, sue, afore execution had, any writ or error to reverse any such judgement in delaying ^b of execution, that then

^a 1. By the common law, the plaintiff is not entitled to costs : but only where he recovers damages according to this statute ; *Pilford's case*, 10 Rep. 116 a. —2. Where a statute gives damages by creation, then the plaintiff shall recover no costs. This statute is introductive of a new law, and therefore the plaintiff recovers what it appoints him to recover, and no more ; 27 H. 6, 10 ; 2 H. 4, 17 b ; 9 H. 6, 66 b ; *Turner v. Gallilee*, Hardr. 152.

^b This act was designed to restrain the abuse of writs of error, brought only for delay, and the body of the act gives the party costs and damages, only for this wrongful delay and vexation. *Holroi v. Ebiason*, 10 Mod. 274.

if the same judgement be affirmed good in the said writ of error, and not erroneous, or that the said writ of error be discontinued in default of the party, or that any person or persons that sueth writ or writs of error, be non-sued in the same,^c that then the said person or persons, against whom the said writ of error is sued, shall recover his costs and damage for his delay and wrongful vexation in the same, by discretion of the justice afore whom the said writ of error is sued.

11 HEN. 7, c. 12.

A mean to help and speed poor persons in their suits.

EVERY poor person or persons, which have, or hereafter shall have cause of action or actions against any person or persons within this realm, shall have by the discretion of the chancellor of this realm for the time being, writ or writs original, and writs of *subpœna*, according to the nature of their causes, therefore nothing paying to your Highness for the seals of the same, nor to any person for the writing of the same writ and writs to be hereafter sued; and that the said chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs, to write the same ready to be sealed, and also learned counsel and attornies for the same, without any reward taking therefore: and after the said writ or writs be returned, if it be afore the King in his Bench, the justices there shall assign to the same poor person or persons, counsel learned, by their discretions, which shall give their counsels, nothing taking for the same: and likewise the justices shall appoint attorney and attornies for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help, and business in the same: and the same law and order shall be observed and kept of all such

* In *Graves v. Short*, Cro. Eliz. 616, it was doubted whether in *formædon*, in which no costs are given in the action, there could be costs in error; and it was resolved by the Court, that costs and damages should be given for delay of execution, although in the first action no damages were recoverable.

suits to be made afore the King's justices of his Common Place, and Barons of his Exchequer, and all other justices in the courts of record, where any such suit shall be.

7 HEN. 8, c. 4.

The avowant in replegiari shall recover his damages and costs of suit.

Sect. 3.—Every avowant, and every other person or persons that make avowry, conisance, or knowledge, or justify, as baily to any other person or persons in any *replegiari*, or second deliverance for any rent, custom, or service, if their avowry, conisance, or justification be found for them, or the plaintiffs in the said actions otherwise barred, shall recover their damages^d and costs that they have sustained, as the plaintiff should have done, if they had recovered in the said replevins.

21 HEN. 8, c. 19.

Avowries shall be made by the lord upon the land, without naming his tenant.

The avowant shall recover damages and costs of suit.

Sect. 3.—Every avowant,^e and every other person or persons that make any such avowry, justification, or conisance, as baily or servant to any person or persons in any *replegiare*, or second deliverance, for rents, customs, services, or for damage fesant, or other rent or rents, upon any distress taken in any lands or tenements, if the same avowry, conisance, or justification be found for them, or the plaintiffs in the same be nonsuit, or otherwise barred, that then they shall recover their damages and costs against the plaintiffs, as the same plaintiffs should have done or had, if they had recovered

^d By the equity of this statute, damages are recoverable upon a nonsuit in second deliverance. *Partridge v. Strange*, Plowd. 82.

^e In an avowry for an estray, if the defendant has a return he shall have costs and damages; as well as for an amercement in a leet, and for a heriot, though not mentioned in this act. *Hasetip v. Chaplen*, Cro. Eliz. 257, 329.

in the *replegiare*, or second deliverance found against the said defendants.

23 HEN. 8, c. 15.

An Act that the plaintiff, being nonsuited, shall yield damages to the defendants in actions personal,^f by the discretion of the justices.

Sect. 1.—And the plaintiff or plaintiffs in any such kind of action, bill, or plaint,^g after appearance^h of the defendant or defendants, *be nonsuited,ⁱ or that any verdict^j happen to pass, by lawful trial* against the plaintiff or plaintiffs in any such action, bill, or plaint, that then the defendant^k or defendants in every such action, bill, or plaint, shall have judgment to recover his costs^l against every such plaintiff or plaintiffs.

He that sueth in *forma pauperis* shall be otherwise punished.

Sect. 2.—All and every such poor person or persons being plaintiff or plaintiffs in any of the said actions, bills, or plaints, which at the commencement of their suits or actions be admitted by discretion of the Judge or Judges, where such suits or actions shall be pursued or taken, to have their process and counsel of charity, without any money or fee paying for the same, shall not be compelled to pay any costs by virtue and force of this statute.^m

^f This act does not extend to actions given by statutes, 3 Leon, 92.

^g Though in an inferior Court, *Harwood v. Furborne*, Cro. Eliz. 96.

^h *Gough v. Simpson*, 11 Mod. 277.

ⁱ If the action was for words not actionable, yet the defendant recovers his costs. Hob. 219.

^j Whether general or special only. *Alsop v. Cleydon*, Cro. Eliz. 465.

^k Though sued as an executor. *Fetherston v. Allybon*, Cro. Eliz. 503.

^l By the common law the defendant could not have costs, and that is clear by the books, and the preambles of this act, and of 23 Hen. 8, c. 15; 8 Eliz. c. 28; and 4 Jac. 1, c. 3; *Turner v. Gallilee*, Hardr. 152.

^m *Hullock on Costs*, ch. iii, s. 3.

33 HEN. 8, c. 39.

The erection of the Court of Surveyors of the King's lands, the names of the officers there, and their authority.

The King in all suits for debt shall recover his costs and damages.

Sect. 54.—'The King in all suits^k hereafter to be taken in or upon any obligation or specialties made or hereafter to be made to the King, or any to his use, shall have and recover his just debts, costs and damages, as other common persons use to do in suits and pursuits for their debts.

5 ELIZ. c. 9.

An Act for punishment of such as shall procure or commit any wilful perjury.

Processes served upon witnesses to testify.

Sect. 12.—If any person or persons upon whom any process out of any of the Courts of Record within this realm or Wales shall be served to testify or depose concerning any cause or matter^l depending in any of the same Courts, and having tendered unto him or them,^m according to his or their maintenance or calling, such reasonable sums of money for his or their costs and charges, as having regard to the distance of the places is necessary to be allowed in that behalf, do not appear according to the tenor of the said process, having not a lawful and reasonable let or impediment to the contrary; that then the party making default,ⁿ to lose and forfeit for every such offence ten pounds, and to yield such further recompence to the party grieved,^o as by the discretion of the Judge of the Court, out of which the said process

^k This act extends to all the Queen's debts, and processes thereupon, as well at common law as upon this statute; and although an obligation is made for performance of covenants, yet after it is broken, it is a debt due to the Queen by obligation within this act. *Sir Thomas Cecil's case*, 7 Rep. 18 b.

^l Though not directly to the issue, but for increasing the damages only. 2 Leon, 198.

^m If process is served upon a married woman, the tender must be made to her, *Havishbury v. Harvey*, Cro. Eliz. 130, 131.

ⁿ As the husband and wife upon the default of the latter. S. C.

^o 2 Leon, 12; 3 Leon, 68, 78.

shall be awarded, according to the loss and hindrance that the party which procured the said process shall sustain, by reason of the non-appearance of the said witness or witnesses; and the said several sums to be recovered by the party so grieved against the offender or offenders, by action of debt, a bill, plaint, or information, in any of the Queen's Majesty's Courts of Record, in which no wager of law, essoin or protection to be allowed.

8 ELIZ. c. 2.

An Act for the avoiding of wrongful vexation touching the writ of latitat.

Costs, damages and charges shall be awarded, where the plaintiff doth delay his suit, doth discontinue, or is nonsuit in the Queen's Bench.

Sect. 2.—If after declaration had and put into the same Court, the plaintiff in such case shall not prosecute the same with effect, but shall willingly and apparently to the same Court suffer his or their said suit to be delayed; or shall after declaration so had, suffer the same suit to be discontinued, or otherwise shall be nonsuit in the same; that then in every such case, the Judges of the said Court for the time being shall by their discretions from time to time, as they shall see or perceive any such default to be in the party or parties at whose suit, means, or procurement such writs or process was sued forth, award and judge to every such person and persons so arrested, vexed, molested or troubled by such writs or suit, his and their costs, damages and charges by any means sustained by occasion of any such writs, process, arrests or suits, taken, sued, or had against him, to be paid by such person or persons that so doth or shall cause or procure any such writs or process to be sued forth, as is aforesaid.

18 ELIZ. c. 5.

An Act to redress disorders in common informers.

No informer shall compound with the defendant but by consent of the Court.—The penalty of an informer delaying or discontinuing his suit, or being nonsuit, &c.

Sect. 3.—No such informer or plaintiff shall or may compound or agree with any person or persons that shall

P. Johnson v. Pays, Cro. Eliz. 434.

offend, or shall be surmised to offend, against any penal statute, for such offence committed, or pretended to be committed, but after answer made in Court unto the information or suit in that behalf exhibited or prosecuted; nor after answer, but by the order or consent of the Court in which the same information or suit shall be depending; upon the pains and penalties hereafter in this present act set down and declared: and that if any such informer^a or plaintiff as aforesaid, shall willingly delay his suit, or shall discontinue or be nonsuit in the same, or shall have the trial or matter past against him therein by verdict or judgment of law; that then in every such case the same informer or plaintiff shall yield, satisfy and pay unto the party defendant, his costs, charges and damages, to be assigned by the Court in which the same suit shall be attempted: for the recovery and execution whereof every such defendant shall immediately upon the same costs, charges and damages assigned, have his *capias ad satisfaciendum, fieri facias*, or *elegit*, to be awarded unto him out of the same Court in which the same shall be so assigned as is aforesaid, as in other cases of execution.

29 ELIZ. C. 4.^b

An Act to prevent extortion in Sheriffs, Undersheriffs, and Bailiffs of Franchises or Liberties, in cases of execution.

How much the sheriff may take for the serving of an execution. The forfeiture of the offender, and how it shall be recovered.

Sect 1.—It shall not be lawful, from the first day of May now next ensuing, to or for any sheriff, undersheriff, bailiff of franchises or liberties, nor for any of their or either of their officers, ministers, servants, bailiffs or deputies, nor for any of them, by reason or colour of their or either of their office or offices, to have, receive, or take of any person or persons whatsoever, directly or indirectly, for the serving or executing of any extent or

^a This statute gives costs only against an informer in a popular action; and does not extend to the "party grieved," if he sue. 2 Leon, 116.

^b *Spring v. Eve*, 2 Mod. 241; 3 Keb. 742.

execution upon the body, lands, goods or chattels of any person or persons whatsoever, more or other consideration, or recompense than in this present act is and shall be limited and appointed, which shall be lawful to be had, received and taken, that is to say, twelve pence of and for every twenty shillings, where the sum exceedeth not one hundred pounds, and six pence of and for every twenty shillings, being over and above the said sum of one hundred pounds, that he or they shall so levy or extend, and deliver in execution, or take the body in execution for, by virtue and force of any such extent or execution whatsoever, upon pain and penalty that all and every sheriff, undersheriff, bailiff of franchises and liberties, their and every of their ministers, servants, officers, bailiffs or deputies, which at any time after the said first day of May now next ensuing shall directly or indirectly do to the contrary, shall lose and forfeit to the party grieved his treble damages, and shall forfeit the sum of forty pounds of good and lawful English money for every time that he, they, or any of them shall do to the contrary; the one moiety thereof to be to our sovereign lady the queen, her heirs and successors, and the other moiety thereof to the party or parties that will sue for the same by any plaint, action, suit, bill or information, wherein no essoin, wager of law, or protection shall be allowed.

Fees for executions within cities or towns corporate.

Sect. 2.—Provided always, that this act, or any thing therein contained, shall not extend to any fees to be taken or had for any execution within any city^a or town corporate; any thing above mentioned to the contrary thereof notwithstanding.

^a Cities and corporations may, by this proviso, take above twelve pence in the pound for serving executions upon judgments out of other Courts, as well as from their own Courts. *The Sheriffs of Gloucester's case*, Cro. Eliz. 263.

43 ELIZ. C. 6.^b*An Act to avoid trifling and frivolous suits in law in her Majesty's Courts in Westminster.*

No costs shall be awarded in a personal action brought for a sum not amounting to 40s.

Sect. 2.—If upon any action^c personal to be brought in any of her Majesty's Courts at Westminster, not being for any title or interest of lands, nor concerning the freehold and inheritance of any lands, nor for any battery, it shall appear to the judges of the same Court, and so signified or set down by the justices before whom the same shall be tried, that the debt or damages^d to be recovered therein in the same Court, shall not amount to the sum of forty shillings or above, that in every such case the judges and justices before whom any such action shall be pursued, shall not award for costs to the party plaintiff any greater or more costs than the sum of the debt or damages so recovered shall amount unto, but less at their discretions.

3 JAC. 1, c. 7.

An Act to reform the multitudes and misdemeanors of Attornies and Solicitors at Law, and to avoid unnecessary suits and charges in Law.

An attorney shall have a ticket of the money he giveth for fees, &c.—
An attorney delaying his client's suit, or demanding more than is due.

Sect. 1.—No attorney, solicitor, or servant to any, shall be allowed from his client or master, of or for any fee given to any serjeant or counsellor at law, or of or for any sum or sums of money given for copies to any clerk or clerks or officers in any Court or Courts of record at Westminster, unless he have a ticket subscribed

^b This act is by 11 & 12 W. 3, c. 9, s. 1, extended to the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham.

^c This extends to every description of personal action. *Irvine v. Reddish*, 5 B. & A. 796; 1 D. & R. 413.

^d *Bartlet v. Robbins*, 2 Wils. 258.

with the hand and name of the same serjeant or counsellor, clerk or clerks, or officers aforesaid, testifying how much he hath received for his fee, or given or paid for copies, and at what time, and how often: and that all attorneys and solicitors shall give a true bill unto their masters or clients, or their assigns, of all other charges concerning the suits which they have for them, subscribed with his own hand and name, before such time as they or any of them shall charge their clients with any the same fees or charges: and that if the attorney or solicitor do or shall willingly delay his client's suits to work his own gain, or demand by his bill any other sums of money, or allowance upon his account of any money which he hath not laid out or disbursed, that in every such case the party grieved shall have his action against such attorney or solicitor, and recover therein costs and treble damages, and the said attorney and solicitor shall be discharged from thenceforth from being an attorney or solicitor any more.

4 JAC. 1, c. 3.

An Act to give costs to the defendant upon a nonsuit of the plaintiff, or verdict against him.

Several cases wherein the defendant shall recover his costs against the plaintiff.

Sect. 2.—If any person or persons at any time after the end of this present session of parliament, shall commence or sue in any court of record or in any other Court, any action, bill, or plaint of trespass or *ejectione firmæ*, or any other action whatsoever, wherein the plaintiff or demandant might have costs (if in case judgment should be given for him) and the plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint, after appearance of the defendant or defendants, be *nonsuited*, or that any *verdict* happen to pass by any lawful trial against the plaintiff or plaintiffs, demandant or demandants in any such action, bill or plaint, that then the defendant or defendants in every such action, bill or plaint, shall have judgment to recover his costs against every such plaintiff and plaintiffs, demandant and demandants.

7 JAC. 1, c. 5.

An Act for ease in pleading troublesome and contentious suits prosecuted against justices of the peace, mayors, constables, and certain other his Majesty's officers for the lawful execution of their office.^e

The defendant allowed double costs of suit.

Sect. 1.—If the verdict shall pass with the said defendant or defendants in any such action; or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the justice or justices, or such other judge before whom the said matter shall be tried, shall by force and virtue of this act allow unto the defendant or defendants,^f his or their double costs, which he or they shall have sustained by reason of their wrongful vexation in defence of the said action or suit; for which the said defendant or defendants shall have like remedy as in other cases where costs by the laws of this realm are given to the defendants.

21 JAC. 1, c. 12.

An Act to enlarge and make perpetual the act made for ease in pleading against troublesome and contentious suits prosecuted against justices of the peace, mayors, constables, and certain other his Majesty's officers, for the lawful execution of their office, made in the seventh year of his Majesty's most happy reign.

The defendant shall have double costs.

Sect. 5.—If the verdict shall pass with the defendant or defendants in any such action, bill, plaint or suit, or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the defendant or defendants shall have such double costs, and all other advantages and remedies, as in and by the said former act is limited, directed or provided.

^e *Stiles v. Cox*, Vaugh. 114.

^f *i. e.* to each of several defendants; and though some one or more has judgment or a verdict against him. *Ibid.* 117.

21 JAC. 1, c. 16.

An Act for limitation of actions, and for avoiding of suits in law.

In actions of slander under 40s. the plaintiff shall recover no greater costs than damages.

Sect. 6.—In all actions upon the case for slanderous words, to be sued or prosecuted by any person or persons in any of the Courts of Record at Westminster, or in any Courts whatsoever that hath power to hold plea of the same, after the end of this present session of parliament, if the jury upon the trial of the issue in such action, or the jury that shall enquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed amount unto, without any further increase of the same; any law, statute, custom or usage to the contrary in any wise notwithstanding.

13 CAR. 2, ST. 2, c. 2.

An act for prevention of vexations and oppressions by arrests, and of delay in the Courts of Law.

Bonds (given for) discharged upon appearance.—Nonsuit for want of a declaration before the end of the next term after appearance, and judgment with costs against the plaintiff.

Sect. 3.—“Upon appearance to be entred in the term wherein such writ, bill or process is returnable, with the respective officer in that behalf, for the said person or persons, by attorney or attorneys in the said respective Courts from whence the said writ, bill or process issued, unto such writ, bill or process, the bond or bonds so given for appearance thereunto, be and are hereby satisfied and discharged; and that after such appearance so entered, no americiaments be set or estreated upon or against any sheriff or other officer aforesaid, or any other person whatsoever, concerning the want of such appearance; and unless the plaintiff or plaintiffs in any such writ, bill or process named, shall put into the Court from

* *Lampen v. Hatch*, 2 Stra. 933; 2 Kely. 61.

whence such writ, bill or process did issue, his or their bill or declaration against the person or persons so arrested, in some personal action or *ejectione firmæ* of lands or tenements, before the end of the term next following after appearance, that then a nonsuit for want of a declaration may be entered against the said plaintiff or plaintiffs in the said Courts respectively; and that every defendant in every such writ, bill or process named, shall or may have judgment to recover costs against every such plaintiff or plaintiffs.

The defendant to have double costs for delays of his execution by writ of error.

Sect. 10.—If any person or persons after the said day shall sue or prosecute any writ or writs of error, for reversal of any judgment whatsoever given after any verdict in any of the Courts aforesaid, and the said judgment shall afterwards be affirmed, then every such person or persons shall pay unto the defendant or defendants in the said writ or writs of error, his or their double costs, to be assessed by the Court where such writ of error shall be depending, for the delaying of execution.

Popular actions; or upon a penal law, indictments, &c. not within this statute.

Sect. 11.—This act, nor anything therein contained, shall not extend to any action popular, nor unto any other action which is or hereafter shall be brought upon any penal law or statute (except debt for not setting out tithes as aforesaid), nor to any indictment, presentment, inquisition, information or appeal; any thing hereinbefore expressed to the contrary thereof notwithstanding.

17 CAR. 2, c. 7.

An act for a more speedy and effectual proceeding upon distresses and avowries for rents.

Plaintiff in replevin being nonsuit before issue joined. How the defendant may avow. The plaintiff nonsuit after avowry made, &c.

Sect. 2.—Whensoever any plaintiff in replevin shall be nonsuit before issue joined, in any suit of replevin by writ or plaint lawfully returned, removed, or depending in any of the King's Courts at Westminster, that the de-

defendant making a suggestion in nature of an avowry or cognizance for such rent, to ascertain the Court of the cause of such distress, the Court upon his prayer shall award a writ to the sheriff of the county where the distress was taken, to enquire by the oaths of twelve good and lawful men of his bailiwick touching the sum in arrear at the time of such distress taken, and the value of the goods or cattle distrained : and thereupon notice of fifteen days shall be given to the plaintiff or his attorney in Court, of the sitting of such enquiry ; and thereupon the sheriff shall enquire of the truth of the matters contained in such writ, by the oaths of twelve good and lawful men of his county ; and upon the return of such inquisition, the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the goods or cattle distrained shall amount unto that value : and in case they shall not amount to that value, then so much as the value of the said goods and cattle so distrained shall amount unto, together with his full costs of suit ; and shall have execution thereupon by *feri facias* or *elegit*, or otherwise as the law shall require. And in case such plaintiff shall be nonsuit after cognizance or avowry made, and issue joined, or if the verdict shall be given against such plaintiff, then the jurors that are impanelled or returned to inquire of such issue, shall at the prayer of the defendant inquire concerning the sum of the arrears, and the value of the goods or cattle distrained : and thereupon the avowant, or he that makes cognizance, shall have judgment for such arrearages, or so much thereof as the goods or cattle distrained amount unto, together with his full costs, and shall have execution for the same by *feri facias* or *elegit*, or otherwise, as the law shall require.

Judgment upon demurrer for the avowant.

Sect. 3.—If judgment in any of the Courts aforesaid be given upon demurrer for the avowant, or him that maketh cognizance for any rent, the Court shall, at the prayer of the defendant, award a writ to inquire of the value of such distress ; and upon the return thereof judgment shall be given for the avowant, or him that makes cognizance as aforesaid, for the arrears alledged to be behind in such avowry or cognizance, if the goods or cattle so distrained shall amount to that value ; and

in case they shall not amount to that value, then for so much as the goods or cattle so distrained amount unto, together with his full costs of suit, and shall have like execution as aforesaid.

22 & 23 CAR. 2, c. 9.

An Act for laying Impositions on Proceedings at Law.

Personal actions wherein no title of land is in question.

Sect 136.—In all actions of trespass, assault and battery, and other personal actions,^b wherein the Judge at the trial of the cause shall not find and certify under his hand upon the back of the record that an assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land in the plaintiff's declaration was chiefly in question, the plaintiff in such action, in case the jury shall find the damages to be under the value of forty shillings, shall not recover or obtain more costs of suit than the damages so found shall amount unto.

8 & 9 WILL. 3, c. 11.

An Act for the better preventing frivolous and vexatious Suits.

Defendant on judgment given for him &c., to recover costs.

Sect. 2.—If at any time after judgment given for the defendant in any such action, plaint, or suit, the plaintiff or demandant shall sue any writ or writs of error to annul the said judgment, and the said judgment shall afterwards be affirmed to be good, or the said writ of error shall be discontinued, or the plaintiff shall be nonsuit therein, the defendant or tenant in every such action, plaint, suit, or writ of error, shall have judgment

^b This act is construed to extend only to actions of trespass, *i. e.* for assault *and* battery, and for local trespasses, and wherein it is possible for the Judge to certify that the battery was proved, or that the freehold or title of the land mentioned in the declaration, was chiefly in question. *Reece v. Lee*, 7 J. B. Moore, 269.

to recover his costs against every such plaintiff or plaintiffs, demandant or demandants.

Plaintiff obtaining judgment on an action of waste, &c., to recover costs.

Sect. 3.—In all actions of waste,ⁱ and actions of debt upon the statute for not setting forth of tithes, wherein the single value or damage found by the jury,^j shall not exceed the sum of twenty nobles,^k and in all suits upon any writ or writs of *scire facias*,^l and suits upon prohibition,^m the plaintiff obtaining judgment, or any award of execution after plea pleaded or demurrer joined therein, shall likewise recover his costs of suit; and if the plaintiff shall become nonsuit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

If defendant be found guilty, plaintiff to have costs, &c.

Sect. 4.—In all actions of trespass to be commenced or prosecuted from and after the said five and twentieth day of March, one thousand six hundred ninety and seven, in any of his Majesty's Courts of Record at Westminster, wherein at the trial of the cause it shall appear, and be certified by the Judge, under his hand,ⁿ upon the back of the record, that the trespass upon which any defendant shall be found guilty was wilful and malicious, the plaintiff shall recover not only his damages but his full costs of suit.

In actions on bonds, &c. plaintiff may assign as many breaches as he pleases. Jury may assess damages. Defendant paying damages, execution may be stayed,—but judgment to remain, to answer any further breach, and plaintiff may have a *scire facias* against the defendant.

Sect. 8.—In all actions, which from and after the said twenty-fifth day of March, one thousand six hundred ninety and seven, shall be commenced or prosecuted in any of his Majesty's Courts of Record, upon any bond or bonds, or

ⁱ Hullock on Costs, c. 4, s. 3.

^j This does not include a judgment by default. *Biddulph v. Cooper*, cited in 1 H. Bla. 108.

^k Each noble reckons for 6s. 8d.

^l The case of a *scire facias* by the Crown as to repeal letters patent, is not within this provision. *Rex v. Miles*, 7 T. R. 367.

^m And see 1 W. 4, c. 21, ss. 1, 2.

ⁿ *Butler v. Cozens*, 11 Mod. 198.

on any penal sum, for non-performance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit; and the jury, upon trial of such action or actions; shall and may assess not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or *nihil dicit*, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which shall issue a writ to the sheriff of that county where the action shall be brought, to summon a jury to appear before the justices or justice of assize, or *nisi prius*, of that county, to inquire of the truth of every one of those breaches, and to assess the damages that the plaintiff shall have sustained thereby; in which writ it shall be commanded to the said justices or justice of assize, or *nisi prius*, that he or they shall make a return thereof to the Court from whence the same shall issue, at the time in such writ mentioned; and in case the defendant or defendants, after such judgment entred, and before any execution executed, shall pay unto the Court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators, shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expences for executing the said execution, the body, lands, or goods of the defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entred upon record; but notwithstanding in each case such judgment shall remain, continue, and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or admini-

nistrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing contained, upon which the plaintiff or plaintiffs may have a *scire facias* upon the said judgment against the defendant, or against his heirs, terre-tenants, or his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to shew cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as there was in the action of debt upon the said bond or obligation, for assessing of damages upon trial of issues joined upon such breaches, or inquiry thereof upon a writ to be awarded in manner as aforesaid; and that upon payment or satisfaction in manner as aforesaid, of such future damages, costs, and charges, as aforesaid, all further proceedings on the said judgment are again to be stayed, and so *toties quoties*, and the defendant, his body, lands, or goods shall be discharged out of execution, as aforesaid.

4 ANNE, c. 16.

An Act for the amendment of the law, and the better advancement of justice.

Defendant may plead several matters.

Sect. 4.—It shall and may be lawful for any defendant or tenant in any action or suit, or for any plaintiff in replevin, in any Court of Record, with the leave of the same Court, to plead^o as many several matters^p thereto as he shall think necessary for his defence.

Proviso touching costs.

Sect. 5.—Provided nevertheless, that if any such matter shall, upon a demurrer joined, be judged insufficient, costs shall be given at the discretion of the Court; or if a verdict shall be found upon any issue in the said cause for the plaintiff or demandant, costs shall be also given in like manner, unless the Judge who tried the issue shall certify that the said defendant or tenant, or plaintiff in replevin, had a probable cause to plead such matter which upon the said issue shall be found against him.

^o *Haiton v. Jefferies*, 10 Mod. 280.

^p But not to plead and demur to the same point. *Ibid.*

Principal and interest on bonds paid in Court, &c.—Court may discharge defendant.

Sect. 13.—If at any time pending an action upon any such bond with a penalty, the defendant shall bring into the Court where the action shall be depending,^a all the principal money and interest due on such bond, and also all such costs as have been expended in any suit or suits in law or equity upon such bond, the said money so brought in shall be deemed and taken to be in full satisfaction and discharge of the said bond, and the Court shall and may give judgment to discharge every such defendant of and from the same accordingly.

Bail-bond taken by sheriff, &c. may be assigned to plaintiff.

Sect. 20.—If any person or persons shall be arrested from and after the said first day of Trinity Term, by any writ, bill, or process, issuing out of any of her Majesty's Courts of Record at Westminster, at the suit of any common person, and the sheriff or other officer taketh bail from such person, against whom such writ, bill, or process is taken out, the sheriff or other officer, at the request and cost of the plaintiff in such action or suit, or his lawful attorney, shall assign^r to the plaintiff in such action the bail-bond, or other security taken from such bail, by endorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so endorsed be duly stamped before any action be brought thereupon; and if the said bail-bond or assignment, or other security taken for bail, be forfeited, the plaintiff in such action, after such assignment made, may bring an action and suit thereupon in his own name, and the Court where the action is brought, may by rule or rules of the same Court, give such relief to the plaintiff and defendant in the original action, and to the bail upon the said bond or other security taken from such bail, as is agreeable to justice and reason, and that such rule or rules of the said Court shall have the nature and effect of a defeazance to such bail-bond, or other security for bail.

^a *Player v. Bandy*, 10 Mod. 26.

^r *Kilton v. Fagg*, 10 Mod. 289; 1 Stra. 60.

On quashing writ of error defendant to have costs.

Sect. 25.—Upon the quashing any writ of error to be sued out after the said first day of Trinity Term, for variance from the original record or other defect, the defendants in such error shall recover against the plaintiff or plaintiffs issuing out such writ, his costs, as he should have had if the judgment had been affirmed, and to be recovered in the same manner.

3 GEO. 1, c. 15.

An Act for the better regulating the office of sheriffs, and for ascertaining their fees, and the fees for suing out their patents, and passing their accounts.

Sheriffs levying debts &c. (except post fines,) to have 1s. per pound for the first 100l., and 6d. for every 20s. above that sum. And on process by *fi. fa.* and extent, to have 1s. 6d. per pound for the first 100l., and 1s. per pound above: provided he answers the same on his account.

Sect. 3.—All sheriffs who shall levy any debts, duties or sums of money whatsoever, except post fines, due or hereafter to become due to the King's Majesty, his heirs or successors, by process to them directed upon the summons of the Pipe or Green Wax, or by *levari facias* out of the Court of Exchequer, shall from time to time for their care, pains and charges, and for their encouragement therein, have an allowance upon their accounts of twelve pence out of every twenty shillings, for any sum not exceeding one hundred pounds so by them levied and collected; and the sum of sixpence only for every twenty shillings, over and above the first one hundred pounds; and for all debts, duties and sums of money, except post-fines due or to become due to his Majesty, his heirs and successors, by process on *feri facias* and extent, issuing out of any of the offices of the Court of Exchequer, the sum of one shilling and six pence out of every twenty shillings, for any sum not exceeding one hundred pounds so by them levied or collected; and the sum of twelve pence only for every twenty shillings over and above the first one hundred pounds: Provided always, such sheriff shall duly answer the same upon his account by the general sealing day of such term in which he ought to be dismissed the Court, or in such

time to which he shall have a day granted to finish his said accounts, by warrant signed by the Lord Chief Baron, or one of the Barons of the Coif of the said Court for the time being, and not otherwise.

No sheriff &c. shall for executing an *hab. fac. possess.* &c., take above 1s. per pound of the yearly value of any manor &c., where the whole exceeds not 100*l.*, per annum, and 6*d.* only for every 20*s.* above the said yearly value.

Sect. 16.—It shall not be lawful for any sheriff, undersheriff, deputy sheriff, or their bailiffs, or for the bailiff of any franchise or liberty, or any of them, by reason or colour of their office or offices, or by reason or colour of their executing of any writ or writs of *habere facias possessionem aut seisinam* to demand, ask or receive any other or greater consideration, fee, gratuity or reward, than is hereafter mentioned, (which shall be lawful to be demanded and taken) that is to say, the sum of twelve pence for every twenty shillings of the yearly value of any manor, messuage, lands, tenements and hereditaments, whereof possession or seisin shall be by them or any of them given, where the whole exceedeth not the yearly value of one hundred pounds, and the sum of sixpence only for every twenty shillings *per annum*, over and above the said yearly value of one hundred pounds.

Poundage shall not be taken for executing any *ca. sa.* upon any judgment &c., (of which part is paid), for any greater sum than what remains due to the plaintiff, who is to mark the same on the back of the writ. And any sheriff &c. offending, is guilty of extortion &c., and for each offence shall forfeit to the party grieved treble damages, and double the sum so extorted; to be ordered by the Court which issued the writ, in a summary way, and also 200*l.*, one half to the King, the other to the prosecutor, in any Court at Westminster, if such suit be commenced within two years.

Sect. 17.—Poundage shall in no case be demanded or taken upon executing of any writ of *copias ad satisfaciendum*, or upon charging any person in execution by virtue of such writ, for any greater sum than the real debt *bond fide* due and claimed by the plaintiff amounteth unto; which sum the plaintiff shall be and is hereby obliged to mark and specify on the back of such writ before the same be delivered to the sheriff to be executed; and in case any sheriff, undersheriff, deputy sheriff, bailiff or other person shall offend against the true meaning hereof, by taking any greater fees, gratuity or reward,

than is herein before allowed, every such person so offending as aforesaid, and being thereof lawfully convicted, shall be adjudged, deemed and taken, and is and are hereby adjudged, deemed and taken to be guilty of extortion, injustice and oppression; and all and every such person and persons being thereof lawfully convicted as aforesaid, shall for every such offence, forfeit to the party grieved treble damages, and double the sum so extorted; which said damages and penalties shall be ordered, decreed and given to the said aggrieved party by the Court out of which such writ or writs issued, upon complaint and proof of such extortion made and exhibited before the Judges of such Court, in such short and summary way and method as to them shall seem meet; and over and above the said damages and penalties, every such person so offending and convicted as aforesaid, shall forfeit the sum of two hundred pounds; one moiety thereof shall be to the King's Majesty, his heirs and successors, and the other moiety thereof to such person or persons as shall sue for the same; to be recovered by action of debt, bill, plaint or information, in any of the Courts of Record at Westminster, in which no essoin, protection or wager of law shall be allowed, nor any more than one imparlance; provided such suit be commenced within two years after such offence committed, and not otherwise; and provided likewise, that no person be sued or prosecuted by virtue of this act, for any offence of this kind committed before the said last day of Michaelmas Term, 1717.

2 GEO. 2, c. 23.

An Act for the better regulation of attornies and solicitors.^a

Attornies &c., not to commence an action for fees till one month after delivery of their bills. Judges &c., to refer bills to be taxed, without money being paid into Court, &c.

Sect. 23.—No attorney or solicitor of any of the courts aforesaid, shall commence or maintain any action or suit for the recovery of any fees, charges or disbursements at law or in equity, until the expiration of one month or

^a In the case of the executor of an attorney, the bills of costs of the latter, are not within the act. *Wellis v. Nicholson*, Andr. 276.

more, after such attorney or solicitor respectively shall have delivered unto the party or parties to be charged therewith, or left for him, her or them, at his, her or their dwelling house or last place of abode, a bill of such fees, charges and disbursements, written in a common legible hand, and in the English tongue, (except law terms and names of writs), and in words at length (except times and sums), which bill shall be subscribed with the proper hand of such attorney or solicitor respectively; and upon application of the party or parties chargeable by such bill, or of any person in that behalf authorized, unto the said Lord High Chancellor or the Master of the Rolls, or unto any of the courts aforesaid, or unto a Judge or Baron of any of the said Courts respectively, in which the business contained in such bill, or the greatest part thereof in amount or value, shall have been transacted; and upon the submission of the said party or parties, or such other person authorized as aforesaid to pay the whole sum, that upon taxation of the said bill shall appear to be due to the said attorney or solicitor respectively, it shall and may be lawful for the said Lord High Chancellor, the said Master of the Rolls, or of any of the Courts aforesaid, or of any Judge or Baron of any of the said Courts respectively, and they are hereby required to refer the said bill, and the said attorney's or solicitor's demand thereupon, (although no action or suit shall be then depending in such Court touching the same), to be taxed and settled by the proper officer of such Court, without any money being brought into the said Court for that purpose; and if the said attorney or solicitor, or the party or parties chargeable by such bill respectively, having due notice, shall refuse or neglect to attend such taxation, the said officer may proceed to tax the said bill *ex parte* (pending which reference and taxation no action shall be commenced or prosecuted touching the said demand), and upon the taxation and settlement of such bill and demand the said party or parties shall forthwith pay to the said attorney or solicitor respectively, or to any person by him authorized to receive the same, that shall be present at the said taxation or otherwise, unto such other person or persons, or in such manner as the respective Court aforesaid shall direct, the whole sum that shall be found to be or remain due thereon, which payment shall

be a full discharge of the said bill and demand; and in default thereof the said party or parties shall be liable to an attachment or process of contempt, or to such other proceedings, at the election of the said attorney or solicitor, as such party or parties was or were before liable unto; and if, upon the said taxation and settlement, it shall be found that such attorney or solicitor shall happen to have been overpaid, then in such case the said attorney or solicitor respectively shall forthwith refund and pay unto the party or parties entitled thereunto, or to any person by him, her, or them authorized to receive the same, if present at the settling thereof, or otherwise, unto such other person or persons, or in such manner as the respective Court aforesaid shall direct, all such money as the said officer shall certify to have been so overpaid; and in default thereof the said attorney or solicitor respectively, shall in like manner be liable to an attachment or process of contempt, or to such other proceedings, at the election of the said party or parties, as he would have been subject unto if this act had not been made; and the said respective Courts are hereby authorized to award the costs of such taxations to be paid by the parties, according to the event of the taxation of the bill, (that is to say) if the bill taxed be less by a sixth part than the bill delivered, then the attorney or solicitor is to pay the costs of the taxation; but if it shall not be less, the Court in their discretion shall charge the attorney or client, in regard of the reasonableness or unreasonableness of such bills.

Attorney, &c. in their own name suing out any writ, &c. not inrolled, forfeit 50*l*.

Sect. 24.—In case any person shall in his own name, or in the name of any person, sue out any writ or process, or commence, prosecute, or defend any action or suit, or any proceedings in any of the Courts of Law or Equity aforesaid, as an attorney or solicitor, for or in expectation of any gain, fee or reward, without being admitted and inrolled as aforesaid, every such person for every such offence shall forfeit and pay fifty pounds to the use of such person who shall prosecute him for the said offence, and is hereby made incapable to maintain or prosecute any action or suit in any Court of Law or Equity, for

any fee, reward, or disbursements on account of prosecuting, carrying on or defending any such action, suit, or proceeding.

11 GEO. 2, c. 19.

An Act for the more effectual securing the payment of rents, and preventing frauds by tenants.

In actions against persons intitled to rents, the defendants may plead the general issue, &c.

Sect. 21.—In all actions of trespass or upon the case, to be brought against any person or persons entitled to rents or services of any kind, his, her, or their bailiff or receiver, or other person or persons relating to any entry by virtue of this act or otherwise, upon the premises chargeable with such rents or services, or to any distress or seizure, sale or disposal of any goods or chattels thereupon; it shall and may be lawful to and for the defendant or defendants in such actions to plead the general issue, and give the special matter in evidence, any law or usage to the contrary notwithstanding: and in case the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment against him, her or them, the defendant or defendants shall recover double costs of suit.

Defendants in replevin to avow, &c. that the plaintiff held the premises at a certain rent, &c.

Sect. 22.—It shall and may be lawful to and for all defendants in replevin, to avow or make cognizance generally, that the plaintiff in replevin, or other tenant of the lands and tenements whereon such distress was made, enjoyed the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for incurred, which rent was then and still remains due; or that the place where the distress was taken was parcel of such certain tenements, held of such honour, lordship, or manor, for which tenements the rent, relief, heriot, or other service distrained for, was at the time of such distress, and still remains due; without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors, owner or owners, of such manor; any law or usage to the contrary notwithstanding: and if the plaintiff or plaintiffs

in such action shall become nonsuit, discontinue his, her, or their action, or have judgment given against him, her, or them, the defendant or defendants in such replevin shall recover double costs of suit.

To prevent vexatious replevins. Replevin bonds may be assigned.

Sect. 23.—All sheriffs and other officers having authority to grant replevins, may and shall in every replevin of a distress for rent, take in their own names from the plaintiff, and two responsible persons as sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one or more credible witness or witnesses, not interested in the goods or distress, which oath the person granting such replevin is hereby authorized and required to administer) and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels distrained in case a return shall be awarded before any deliverance be made of the distress; and that such sheriff or other officer as aforesaid, taking any such bond, shall at the request and costs of the avowant or person making cognizance, assign such bond to the avowant or person aforesaid, by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses; which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereupon; and if the bond so taken and assigned be forfeited, the avowant or person making conveyance, may bring an action and recover thereupon in his own name; and the Court where such action shall be brought may by a rule of the same Court give such relief to the parties upon such bond as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeazance to such bond.

12 GEO. 2, c. 13.

An Act (inter alia) for continuing, explaining, and amending the Act made in the second year of the reign of his present Majesty for the better regulation of Attornies and Solicitors.

Act 2 Geo. 2, c. 23, not to extend to any bill of fees between one solicitor and another.

Sect. 6.—The said act of the second year of his present Majesty, for the better regulating of attornies and

solicitors, or any clause, matter, or thing therein contained, shall not extend to any bill of fees, charges, and disbursements, that are now, or shall hereafter become due from any attorney or solicitor to any other attorney or solicitor, or clerk in Court; but that every such attorney, solicitor, or Clerk in Court, may use such remedies for the recovery of his fees, charges, and disbursements against such other attorney or solicitor, as he might have done before the making of this act.

14 GEO. 2, c. 17.

An Act to prevent inconveniences arising from delays of causes after issue joined.

On the plaintiff's neglect to bring on an issue to trial, the Court may give judgment as in case of nonsuit.

Sect 1.—That where any issue is or shall be joined in any action or suit at law in any of his Majesty's Courts of Record at Westminster, the Court of Great Session for the principality of Wales, the Court of Great Session for the County Palatine of Chester, the Court of Common Pleas for the County Palatine of Lancaster, or the Court of Pleas for the County Palatine of Durham, and the plaintiff or plaintiffs in any such action or suit hath or have neglected, or shall neglect to bring such issue on to be tried, according to the course and practice of the said Courts respectively, it shall and may be lawful for the judge or judges of the said Courts respectively, at any time after such neglect, upon motion made in open Court (due notice having been given thereof) to give the like judgment for the defendant or defendants in every such action or suit, as in cases of nonsuit, unless the said judge or judges shall, upon just cause and reasonable terms, allow any further time or times for the trial of such issue; and if the plaintiff or plaintiffs shall neglect to try such issue within the time or times so allowed, then, and in every such case, the said judge or judges shall proceed to give such judgment as aforesaid.

Defendant on such judgment to have costs.

Sect. 3.—The defendant or defendants shall upon such judgment be awarded his, her, or their costs in any action or suit where he, she or they would upon nonsuit

be intitled to the same, and in no other action or suit whatsoever.

Notice of trial may be countermanded six days before the trial intended.

Sect. 5.—In case any party or parties shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same in writing, at least six days before such intended trial, every such party shall be obliged to pay unto the party or parties to whom such notice of trial shall have been given as aforesaid, the like costs and charges as if such notice of trial had not been countermanded.

24 GEO. 2, c. 44.

An Act for the rendering justices of the peace more safe in the execution of their office, and for indemnifying Constables and others acting in obedience to their warrants.

No writ to be sued against any justice for what he shall do in the execution of his office, till notice given him.

Sect. 1.—No writ shall be sued out against, nor any copy of any process, at the suit of a subject, shall be served on any justice of the peace for any thing by him done in the execution of his office, until notice in writing of such intended writ or process shall have been delivered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue or cause the same to be sued out or served, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party hath or claimeth to have against such justice of the peace; on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall be entitled to have the fee of twenty shillings for the preparing and serving such notice, and no more.

He may tender amends, and plead the same in bar, &c.

Sect. 2.—It shall and may be lawful to and for such justice of the peace, at any time within one calendar month after such notice given as aforesaid, to tender amends to the party complaining, or to his or her agent

or attorney; and in case the same is not accepted, to plead such tender in bar to any action to be brought against him, grounded on such writ or process, together with the plea of not guilty, and any other plea with the leave of the Court; and if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient, then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his or her action, or in case judgment shall be given for such defendant or defendants upon demurrer, such justice shall be intitled to the like costs as he would have been intitled unto, in case he had pleaded the general issue only; and if upon issue so joined the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants on such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he or she shall recover, together with his or her costs of suit.

Where the judge shall certify the cause of action was wilfully committed, plaintiff to recover double costs.

Sect. 7.—Where the plaintiff in any such action against any justice of the peace shall obtain a verdict, in case the judge before whom the cause shall be tried, shall in open Court certify on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

19 GEO. 3, c. 70.

An Act for extending the provisions of an act made in the twelfth year of the reign of King George the First, intituled, "An Act to prevent frivolous and vexatious Arrests; and for other purposes."

In all cases where final judgment shall be obtained in an inferior Court, and affidavit made thereof in any Court of Record at Westminster, and of execution having issued against the person or effects of the defendant, and that the same cannot be found within the jurisdiction of the inferior Court, the record of such judgment may be removed into the Superior Court, and writs of execution issued to the Sheriff of any county, &c.

Sect. 4.—In all cases where final judgment shall be obtained in any action or suit in any inferior Court of Re :

cord, it shall and may be lawful to and for any of his Majesty's Courts of Record at Westminster, upon affidavit made and filed therein of such judgment being obtained, and of diligent search and enquiry having been made after the person or persons of the defendant or defendants, or his, her, or their effects, and of execution having issued against the person or persons, or effects, as the case may be, of the defendant or defendants, and that the person or persons, or effects, of the defendant or defendants, are not to be found within the jurisdiction of such inferior Court, which affidavit may be made before a judge or commissioner authorized to take affidavits, and such superior Court to cause the record of the said judgment to be removed into such superior Court, to issue writs of execution thereupon to the sheriff of any county, city, liberty or place, against the person or persons, or effects, of the defendant or defendants, in the same manner as upon judgments obtained in the said Courts at Westminster; and the sheriff, upon every such execution, shall, and he is hereby authorised to detain the defendant or defendants, until the sum of twenty shillings be paid to him, or to levy the same out of the effects, according to the nature of the execution, for the extraordinary costs of the plaintiff or plaintiffs in the inferior Court subsequent to the said judgment, and of the execution in the superior Court, over and above the money for which such execution shall be issued.

No cause under 10*l.* to be removed into a Superior Court, unless the defendant become bound to pay debt and costs, if judgment pass against him.

Sect. 6.—No cause, where the cause of action shall not amount to the sum of ten pounds, or upwards, shall be removed or removeable into any superior Court, by any writ of *habeas corpus* or otherwise, unless the defendant, who shall be desirous of removing such cause, shall enter into the like recognizance for payment of the debt and costs, in case judgment shall pass against him.

25 GEO. 3, c. 80.

An Act for granting to his Majesty certain duties on certificates to be taken out by Solicitors, Attornies and others, practising in certain courts of justice in Great Britain, &c.

Penalty on acting without certificate or giving in a false place of residence.

Sect. 7.—Every person who shall, in his own name, or in the name of any other person or persons, sue out any writ or process, or commence, prosecute, carry on, or defend any action or suit, or any proceedings as a solicitor, attorney, notary, proctor, agent or procurator, in any of the Courts aforesaid, for or in expectation of any gain, fee or reward, without having obtained such certificate, in such manner as herein-before is directed, or shall deliver in to the respective officers appointed by this act, any false or fictitious place of residence, with intent to evade the payment of the higher duties, in and by this act imposed, contrary to the true intent and meaning of this act, every such person, for every such offence, shall forfeit and pay the sum of fifty pounds, to be recovered and applied as hereinafter is directed; and shall be, and is hereby made incapable to maintain or prosecute any action or suit in any Court of Law or Equity, for the recovery of any fee, reward, or disbursements, on account of prosecuting, carrying on, or defending any such action, suit, or proceeding.

43 GEO. 3, c. 46.

An Act for the more effectual prevention of frivolous and vexatious Arrests and Suits; and to authorize the lerying of poundage upon executions in certain cases.

Persons arrested on mesne process, instead of giving bail, may deposit with the sheriff, &c. the sum indorsed on the writ, with 10*l.* to answer costs, &c.—Such deposit shall be paid into Court, and on the delendant's perfecting bail be repaid him; or on bail not being put in, be paid over to the plaintiff, &c. by order of Court.

Sect. 2.—All persons who shall, from and after the first day of June, in the year of our Lord, 1803, be arrested upon mesne process within those parts of the

United Kingdom of Great Britain and Ireland called England and Ireland, shall be allowed in lieu of giving bail to the sheriff, to deposit in the hands of the sheriff, by delivering to him, or to his under-sheriff, or other officer to be by him appointed for that purpose, the sum indorsed upon the writ by virtue of the affidavit for holding to bail in that action, together with 10*l.* in addition to such sum to answer the costs which may accrue or be incurred in such action up to and at the time of the return of the writ; and also such further sum of money, if any, as shall have been paid for the king's fine upon any original writ; and shall thereupon be discharged from such arrest as to the action in which he, she, or they shall so deposit the sum indorsed on the writ; and that the sheriff shall, in every such case, at or before the return of the said writ, pay into the Court in which such writ shall be returnable the sum of money so deposited with him as aforesaid; and thereupon in case the defendant or defendants shall afterwards duly put in and perfect bail in such action according to the course and practice of such Court, the sum of money so deposited and paid into Court as aforesaid shall, by order of the Court, upon motion to be made for that purpose, be repaid to such defendant or defendants; but in case the defendant or defendants shall not duly put in and perfect bail in such action, then and in such case, the said sum of money so deposited and paid into Court as aforesaid, shall, by order of the Court, upon a like motion to be made for that purpose, be paid over to the plaintiff or plaintiffs in such action, who shall be thereupon authorized to enter a common appearance, or file common bail for such defendant or defendants, if the said plaintiff or plaintiffs shall so think fit; such payment for the plaintiff or plaintiffs to be made subject to such deductions, if any, from the sum of 10*l.* deposited and paid to answer the costs as aforesaid, as upon the taxation of the plaintiff's costs, as well of the suit as of his application to the Court in that behalf, may be found reasonable.

Wherever plaintiff shall not recover the amount of the sum for which defendant was held to bail, (without probable cause), defendant shall be entitled to costs under a rule of Court.

Sect. 3.—In all actions to be brought in England or Ireland, from and after the said first day of June, in the said

year of our Lord, 1803, wherein the defendant or defendants shall be arrested and held to special bail, and wherein the plaintiff or plaintiffs shall not recover the amount of the sum for which the defendant or defendants in such action shall have been so arrested and held to special bail, such defendant or defendants shall be entitled to costs of suit, to be taxed according to the custom of the Court in which such action shall have been brought; provided that it shall be made appear to the satisfaction of the Court in which such action is brought, upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, that the plaintiff or plaintiffs in such action had not any reasonable or probable cause for causing the defendant or defendants to be arrested and held to special bail in such amount as aforesaid, and provided such Court shall thereupon by rule or order of the same Court, direct that such costs shall be allowed to the defendant or defendants; and the plaintiff or plaintiffs shall upon such rule or order being made as aforesaid, be disabled from taking out any execution for the sum recovered in any such action, unless the same shall exceed, and then in such sum only as the same shall exceed, the amount of the taxed costs of the defendant or defendants in such action; and in case the sum recovered in any such action shall be less than the amount of the costs of the defendant or defendants to be taxed as aforesaid, that then the defendant or defendants shall be entitled, after deducting the sum of money recovered by the plaintiff or plaintiffs in such action from the amount of his or their costs so to be taxed as aforesaid, to take out execution for such costs, in like manner as a defendant or defendants may now by law have execution for costs in other cases.

In actions on judgments, plaintiffs not entitled to costs, unless by rule of Court.

Sect. 4.—In all actions which shall be brought in England or Ireland, from and after the said first day of June in the said year of our Lord, 1803, upon any judgment recovered or which shall be recovered, in any Court in England or Ireland, the plaintiff or plaintiffs in such action on the judgment shall not recover or be entitled to any costs of suit, unless the Court in which such action on the judgment shall be brought, or some judge of the same Court shall otherwise order.

Plaintiffs may levy poundage, and expence of execution, beyond the judgment.

Sect. 5.—In every action in which the plaintiff or plaintiffs shall be entitled to levy under an execution against the goods of any defendant, such plaintiff or plaintiffs may also levy the poundage, fees and expences of the execution, over and above the sum recovered by the judgment.

43 GEO. 3, c. 141.

An Act to render Justices of the Peace more safe in the execution of their duty.

In actions against justices for any conviction &c. the plaintiff (besides any penalty levied) shall recover only two-pence damages, unless malice and want of probable cause be expressly alleged.

Sect 1.—In all actions whatsoever, which shall at any time after the passing of this act, be brought against any justice or justices of the peace in the United Kingdom of Great Britain and Ireland, for or on account of any conviction by him or them had or made, under or by virtue of any act or acts of parliament in force in the said United Kingdom, or for or by reason of any act, matter or thing whatsoever, done or commanded to be done by such justice or justices, for the levying of any penalty, apprehending of any party, or for or about the carrying of any such conviction into effect, in case such conviction shall have been quashed, the plaintiff or plaintiffs in such action or actions, besides the value and amount of the penalty or penalties which may have been levied upon the said plaintiff or plaintiffs, in case any levy thereof shall have been made, shall not be entitled to recover any more or greater damages than the sum of two-pence, nor any costs of suit whatsoever, unless it shall be expressly alleged in the declaration in the action wherein the recovery shall be had, and which shall be in an action on the case only, that such acts were done maliciously and without any reasonable and probable cause.

Nor shall the penalty, &c. be recovered if plaintiff be proved guilty of the offence, &c.

Sect. 2.—Such plaintiff shall not be entitled to recover against such justice any penalty which shall have been levied, nor any damages or costs whatsoever, in case such

justice shall prove at the trial that such plaintiff was guilty of the offence whereof he had been convicted, or on account of which he had been apprehended, or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.

48 GEO. 4, c. 123.

An Act for the Discharge of Debtors in Execution for small Debts, from Imprisonment in certain Cases.

Persons having lain in prison for a year in execution on judgment of any Court, whether of Record or not, for any damages not exceeding £20 (exclusive of costs), shall be discharged on application to the Courts at Westminster in term time.—Persons fraudulently obtaining discharge may be retaken in execution, &c.—Such discharge no escape.—Estate of the debtors so discharged shall remain liable.—Except necessities.—But such debtors shall not be arrested in any action on such judgment, &c.

Sect. 1.—All persons in execution upon any judgment, in whatsoever Court the same may have been obtained, and whether such Court be or be not a Court of Record, for any debt or damages not exceeding the sum of twenty pounds, exclusive of the costs recovered by such judgment, and who shall have lain in prison thereupon for the space of twelve successive calendar months next before the time of their application to be discharged as hereinafter mentioned, shall or may, upon his, her, or their application for that purpose in term time made to some one of his Majesty's Superior Courts of Record at Westminster, to the satisfaction of such Court, be forthwith discharged out of custody, as to such execution by the rule or order of such Court: Provided always, that in case of any such application being made to be discharged out of execution upon a judgment obtained in any of his Majesty's Superior Courts of Record at Westminster, such application shall be made to such one of those Courts only, wherein such judgment shall have been obtained, and that whether the person so in execution shall have been actually detained in the gaol or prison of the same Court, or shall then stand committed on *habeas corpus* to the gaol or prison of another Court: Provided always, that if it shall happen that any such discharge shall have been unduly or fraudulently obtained upon any false allegation of circumstances, which, if true, might have entitled

the prisoner to be discharged by virtue of this act, such prisoner shall, upon the same being made to appear to the satisfaction of the said Court by whose rule or order the said prisoner had been so discharged, be liable to be again taken in execution and remanded to his former custody by the rule or order of the same Court: Provided also, that no sheriff, gaoler, or other person whatsoever shall be liable as for the escape of any such prisoner in respect of his enlargement during such time as he shall have been at large, by means of such his undue discharge as aforesaid: Provided always, that for and notwithstanding the discharge of any debtor or debtors by virtue of this act, the judgment whereupon any such debtor or debtors was or were taken or charged in execution, shall nevertheless continue and remain in full force to all intents and purposes, except as to the taking in execution the person or persons of such debtor or debtors thereupon, as is hereinafter provided: And it shall and may be lawful for the creditor or creditors at whose suit such debtor or debtors had been, was, or were so taken or charged in execution, to take out all such execution or executions on every such judgment against the lands, tenements, hereditaments, goods and chattels of any such debtor or debtors (other than and except the necessary wearing apparel and bedding of and for him, her or them, and for his, her, or their family, and the necessary tools for his, her, or their trade or occupation, not exceeding the value of ten pounds in the whole); or to bring any such action or actions on any such judgment against such debtor or debtors respectively, or to bring any such action or use any such remedy for the recovery and satisfaction of his, her or their demand, against any other person or persons liable to satisfy the same, in such and the same manner, but in such and the same manner only as such creditor or creditors otherwise could or might have done in case such debtor or debtors had never been taken or charged in execution upon such judgment: Provided always, that no debtor or debtors who shall be duly discharged in pursuance of this act, shall at any time afterwards be taken or charged in execution upon any judgment herein so as before declared to continue and remain in full force, nor be arrested in any action to be brought on any such judgment, and that no proceeding whatsoever by *scire facias*, action or otherwise, shall

be maintained or had against the bail in any action upon the judgment, wherein the defendant or defendants shall have been charged in execution, and afterwards discharged by virtue of the provisions of this act.

6 GEO. 4, c. 50.

An Act for Consolidating and Amending the Laws relative to Jurors and Juries.

Costs of special jury.—Judge's certificate.

Sect. 34.—The person or party who shall apply for a special jury, shall pay the fees for striking such jury, and all the expenses occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury; unless the Judge before whom the cause is tried shall, immediately after the verdict, certify under his hand, upon the back of the record, that the same was a cause proper to be tried by a special jury.

Fees to special jurors.

Sect. 35.—No juror who shall serve upon any special jury shall be allowed to take for serving on any such jury more than such sum of money as the Judge who tries the issue shall think just and reasonable, and which shall not exceed the sum of one pound one shilling, except in causes wherein a view is directed, and shall have been had by such juror.

6 GEO. 4, c. 96.

An Act for preventing frivolous Writs of Error.

How far on judgment given, execution not stayed by writ of error, &c.

Sect. 1.—Upon any judgment hereafter to be given in any of the said Courts in any personal action, execution shall not be stayed or delayed by writ of error or superseas thereupon, without the special order of the Court, or some Judge thereof, unless a recognizance with condition

according to the statute made in the third year of the reign of his Majesty King James the First, intituled, "An Act to avoid unnecessary delays of execution," he first acknowledged in the same Court.

7 & 8 GEO. 4, c. 71.

An Act to prevent Arrests upon Mesne Process where the debt or cause of action is under twenty pounds ; and to regulate the practice of arrests.

Defendant discharged from arrest upon making deposit with the sheriff pursuant to 43 G. 3, c. 46, may, instead of perfecting special bail, allow deposit to be paid into Court; or if he remains in custody or gives bail to the sheriff, he may pay the debt into Court, with £20 to answer costs, and file common bail.

Sect. 2.—In all cases in which any defendant shall have been discharged from arrest upon making such deposit as is required by the said recited act, and the sum so deposited shall have been paid into Court, it shall be lawful for such defendant, instead of putting in and perfecting special bail in the action, according to the course and practice of the Court, to allow the sum so deposited with the sheriff, and by him paid into Court as aforesaid, together with the additional sum of ten pounds, to be paid into Court by such defendant as a further security for the costs of the action, to remain in the Court to abide the event of the suit; and in all cases where any defendant shall have been arrested and shall have given bail to the sheriff, or shall have been arrested and remain in custody, it shall be lawful for such last mentioned defendant instead of putting in and perfecting special bail, to deposit and pay into the said Court the sum indorsed upon the writ, together with the amount of the King's fine, if any, upon the original writ, and the further sum of 20*l.* as a security for the costs of the action, there to remain to abide event of the suit; and thereupon the said defendant may, and he is hereby required to enter a common appearance, or file common bail in the action, within such time as he would have been required to have put in and perfected special bail in the action according to the course of the said Court, or in default thereof the plaintiff in the action is hereby empowered to enter such common appearance or file common bail for the said defendant, and the cause

may proceed as if the defendant had put in and perfected special bail; and in case judgment in the said action shall be given for the plaintiff, he shall be entitled, by order of the Court, upon motion made for that purpose, to receive the said money so remaining in, or so deposited or paid into the Court as aforesaid, or so much thereof as will be sufficient to satisfy the sum recovered by the judgment and the costs of the application; and if judgment be given in the said action for the defendant, or the plaintiff discontinue his suit, or be otherwise barred, or in case the sum deposited and paid into Court be more than sufficient to satisfy the plaintiff the said money so deposited or paid into Court, or so much thereof as shall remain, shall by order of the Court, upon motion to be made for that purpose, be repaid to such defendant.

Defendant after perfecting bail, may make deposit and payment, and file common bail.

Sect. 4.—It shall and may be lawful for any defendant who shall have put in and perfected special bail in any cause, upon motion to the Court in which the action is brought, if the Court shall so think fit, to deposit and pay into Court the sum which would have been deposited and paid in case the defendant had originally elected so to do, together with such further sum, to answer the costs, as the Court may direct, to abide the event of the said suit, and to be disposed of in manner aforesaid; and thereupon it shall be lawful for the said Court to direct a common appearance to be entered, or common bail to be filed for the defendant, and an exoneratur to be entered upon the bail-piece in the said cause.

11 GEO. 4, AND 1 WILL. 4, c. 70.

An Act for the more effectual administration of Justice in England and Wales.

Writ of possession may issue on certificate of Judge, &c.

Sect 38.—In all cases of ejectments at Nisi Prius, when a verdict shall be given for the plaintiff, or the plaintiff shall be nonsuited for want of the defendant's appearance to confess lease, entry or ouster, it shall be lawful for the Judge before whom the cause shall be tried to certify his opinion on the back of the record that a writ

of possession ought to issue immediately, and upon such certificate a writ of possession may be issued forthwith ; and the costs may be taxed, and judgment signed and executed afterwards at the usual time, as if no such writ was issued : Provided always, that such writ, instead of reciting a recovery by judgment in the form now in use, shall recite shortly that the cause came on for trial at Nisi Prius at such a time and place, and before such a Judge, (naming the time, place, and Judge,) and that thereupon the said Judge certified his opinion that a writ of possession ought to issue immediately.

1 WILL. 4, c. 7.

An Act for the more speedy judgment and execution in actions brought in his Majesty's Courts of Law at Westminster, and in the Court of Common Pleas of the County Palatine of Lancaster ; and for amending the law as to judgment on a cognovit actionem in cases of Bankruptcy.

Writs may be made returnable on any day to be named therein.
Proceedings to be had at the return thereof.

Sect. 1.—Any writ of inquiry of damages to be issued in or by either of the said Courts, by whatever form of process the action may have been commenced, may be made returnable and be returned on any day certain, in term or vacation, to be named in such writ, and such writ shall be as valid and effectual as if the same had been returnable according to the course of the common law ; and thereupon at the return thereof, a rule for judgment may be given, costs taxed, final judgment signed, and execution issued forthwith, unless the sheriff or other officer before whom the same may be executed shall certify under his hand upon such writ the judgment ought not so be signed until the defendant shall have had an opportunity to apply to the Court to set aside the execution of such writ, or one of the Judges of the said Courts shall think fit to order the judgment to be stayed until a day to be named in such order : Provided always, that in case the signing of judgment on such writ shall be postponed by reason of such certificate or order, or by the choice of the plaintiff, or otherwise, and judgment shall be afterwards signed thereon, such judgment shall be entered of record as of the day of the return of such writ, unless the Court shall otherwise direct.

The judge before whom any action shall be tried may certify before the end of the sittings or assizes that execution ought to issue forthwith; in which case judgment may be signed and execution issued.

Sect. 2.—In all actions brought in either of the said Courts, by what ever form of process the same may be commenced, it shall be lawful for the judge, before whom any issue joined in such action shall be to be tried, in case the plaintiff or defendant therein shall become nonsuit, or a verdict shall be given for the plaintiff or defendant, defendant or tenant, to certify under his hand, on the back of the record, at any time before the end of the sittings or assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject, or not, to any condition or qualification, and in case of a verdict for the plaintiff, then either for the whole or for any part of the sum found by such verdict; in all which cases a rule for judgment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith, or afterwards, according to the terms of such certificate on any day in vacation or term; and the *postea*, with such certificate as a part thereof shall and may be entered of record as of the day on which the judgment shall be signed, although the writ of *distringas juratores* or *habeas corpora juratorum* may not be returnable until after such day: Provided always, that it shall be lawful for the party entitled to such judgment to postpone the signing thereof.

Judgment may be vacated, execution stayed, and new trial granted.

Sect. 4.—Notwithstanding any judgment signed or recorded, or execution issued, by virtue of this act, it shall be lawful for the Court in which the action shall have been brought to order such judgment to be vacated, and execution to be stayed or set aside, and to enter an arrest of judgment, or grant a new trial or new writ of inquiry, as justice may appear to require; and thereupon the party affected by such writ of execution shall be restored to all that he may have lost thereby, in such manner as upon the reversal of a judgment by writ of error, or otherwise as the Court may think fit to direct.

Limitation as to taxing costs.

Sect. 6.—That no officer of either of the said Courts shall, for the purpose of taxing costs on any judgment to be signed by virtue of this act, be compelled to attend at any time between the last day of August and the twenty-first day of October in any year.

1 WILL. 4, c. 21.

An Act to improve the Proceedings in Prohibition, and on Writs of Mandamus.

Applications for writs of prohibitions may be made on affidavit only. Contents of declaration in case the party is directed to declare in prohibition. Defendant may demur to declaration. Judgment. Costs. Damages.

Sect. 1.—It shall not be necessary to file a suggestion on any application for a writ of prohibition, but such application may be made on affidavits only; and in case the party applying shall be directed to declare in prohibition before writ issued, such declaration shall be expressed to be on behalf of such party only, and not, as heretofore, on the behalf of the party and of his Majesty, and shall contain and set forth in a concise manner so much only of the proceeding in the Court below as may be necessary to shew the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue; to which declaration the party defendant may demur, or plead such matters by way of traverse or otherwise, as may be proper to shew that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given that the writ of prohibition do or do not issue, as justice may require; and the party in whose favour judgment shall be given, whether on nonsuit, verdict, demurrer, or otherwise, shall be entitled to the costs attending the application and subsequent proceedings, and have judgment to recover the same; and in case a verdict shall be given for the party plaintiff in such declaration, it shall be lawful for the Judge to assess damages, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs.

So much of 2 & 3 Ed. 6, c. 13, as relates to prohibition repealed.

Sect. 2.—So much of an act passed in the second and third years of the reign of King Edward the Sixth, intituled “An Act for Payment of Tithes” as relates to Prohibition, shall be and the same is repealed.

The enactments of 9 Ann. c. 20, relating to returns to writs of *mandamus* therein mentioned, and the proceedings thereon, extended to all other writs of *mandamus*.

Sect. 3.—And whereas the provisions contained in a certain act of Parliament passed in the ninth year of the reign of Queen Anne, intituled “An Act for rendering the Proceedings upon Writs of *Mandamus* and Informations in the nature of a *Quo Warranto* more speedy and effectual, and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs,” relating to the writ of *mandamus* therein mentioned, have been found useful and convenient, and the same ought to be extended to the proceeding on other such writs; Be it therefore enacted that the several enactments contained in the said statute relating to the return to writs of *mandamus*, and the proceedings on such returns, and to the recovery of damages and costs, shall be and the same are hereby extended and made applicable to all other writs of *mandamus*, and the proceedings thereon, except so far only as the same may be varied or altered by this act.

For protection of certain officers to whom writs of *mandamus* are directed.

Sect. 4.—It shall be lawful for the Court to which application may be made for any writ of *mandamus* (other than such as relate to the said offices and franchises mentioned in or provided for by the said act made in the reign of Queen Anne) if such Court shall see fit so to do, to make rules and orders, calling, not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to shew cause against the issuing of such writ and payment of costs of the application, and upon the appearance of such other person in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are or may be given or mentioned by or in any act passed or to be passed during this present session of parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims: Provided always, that the return to be made to any such writ, and issues joined in

fact or in law upon any traverse thereof, or upon any demurrer, shall be made and joined by and in the name of the person to whom such writ shall be directed; but nevertheless, the same shall and may, if the Court shall think fit so to direct, be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules; and in that case such other person shall be permitted to frame the return, and to conduct the subsequent proceedings, at his own expence; and in such case, if any judgment shall be given for or against the party suing such writ, such judgment shall be given against or for the person or persons on whose behalf the return shall be expressed to be made, and who shall have the like remedy for the recovery of costs and enforcing the judgment as the person to whom the writ shall have been directed might and would otherwise have had.

Proceedings not to abate by removal of officer.

Sect. 5.—In case the return to any such writ shall, in pursuance of the authority given by this act, be expressed to be made on behalf of any other person as aforesaid, the further proceedings on such writ shall not abate or be discontinued by the death or resignation of, or removal from office of, the person having made such return, but the same shall and may be continued and carried on in the name of such person; and if a peremptory writ shall be awarded, the same shall and may be directed to any successor in office or right to such person.

Costs to be in the discretion of the Court.

Sect. 6.—In all cases of application for any writ of *mandamus* whatsoever, the costs of such application, whether the writ shall be granted or refused, and also the costs of the writ, if the same shall be issued and obeyed, shall be in the discretion of the Court, and the Court is hereby authorized to order and direct by whom and to whom the same shall be paid.

1 WILL. 4, c. 22.

An Act to enable Courts of Law to order the examination of witnesses upon interrogatories and otherwise.

Costs to be in the discretion of the Court.

Sect. 3.—The costs of every writ or commission to be issued under authority of the said recited

act,* or of the power hereinbefore given by this act, in any action at law depending in either of the said Courts at Westminster, and of the proceedings thereon, shall be in the discretion of the Court issuing the same.

Payment of expences. Proviso as to production of documents.

Sect. 5.—Provided always, that every person whose attendance shall be so required, shall be entitled to the like conduct money and payment for expences and loss of time as upon attendance at a trial: Provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compellable to produce at a trial of the cause.

Costs of the order for examination may be made costs in the cause.

Sect. 9.—The costs of every rule or order to be made for the examination of witnesses under any commission or otherwise by virtue of this act, and of the proceedings thereupon, shall (except in the case hereinbefore provided for) be costs in the cause, unless otherwise directed either by the Judge making such rule or order, or by the Judge before whom the cause may be tried, or by the Court.

1 & 2 WILL. 4, c. 58.

An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims.

If such third party shall not appear, &c. the Court may bar his claim against the original defendant.

Sect. 3.—If such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court or Judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators; saving nevertheless, the right or claim of such third party against the plaintiff; and

* 13 Geo. 3, c. 63.

thereupon to make such order between such defendant and the plaintiff, as to costs and other matters as may appear just and reasonable.

For relief of sheriffs and other officers in execution of process against goods and chattels.

Sect. 6.—When any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such sheriff or other officer made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by rule of Court, as well the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court.

Rules, orders, &c. made in pursuance of this act may be entered of record, and made evidence. Costs. Writs. Sheriff's Fees.

Sect. 7.—All rules, orders, matters, and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any) be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge upon any lands, tenements, or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *fiery facias* or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution if by *fiery facias*; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff

or other officer, executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the Court.

3 & 4 WILL. 4, c. 42.

An Act for the further amendment of the law, and the better advancement of justice.

Provision in case of subsequent proceedings against the persons named in a plea in abatement.

Sect. 10.—In all cases in which after such plea in abatement the plaintiff shall, without having proceeded to trial upon an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, if it shall appear by the pleadings in such subsequent action, or on the evidence at the trial thereof, that all the original defendants are liable, but that one or more of the persons named in such plea in abatement or any subsequent plea in abatement, are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment, or to a verdict and judgment as the case may be, against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same as costs in the cause against the defendant or defendants who shall have so pleaded in abatement, the non-joinder of such person; provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

Misnomer not to be pleaded in abatement.

Sect. 11.—No plea in abatement for a misnomer shall be allowed in any personal action, but that in all cases in which a misnomer would but for this act have been by law pleadable in abatement in such actions, the defendant shall be at liberty to cause the declaration to be amended, at the costs of the plaintiff, by inserting the right name

upon a judge's summons, founded on an affidavit of the right name; and in case such summons shall be discharged, the costs of such application shall be paid by the party applying, if the judge shall think fit.

Provisions of 1 W. 4, c. 7, to extend to such writs of inquiry and issues.

Sect. 19.—Provided also, that all and every the provisions contained in the statute made and passed in the first year of the reign of his present Majesty, intituled, "An Act for the more speedy judgment and execution in actions brought in his Majesty's Courts of Law at Westminster, and in the Court of Common Pleas of the County Palatine of Lancaster, and for amending the law as to judgment on a *cognovit actionem* in cases of bankruptcy," shall, so far as the same are applicable thereto, be extended and applied to judgments and executions upon such writs of inquiry and writs for the trials of issues, in like manner as if the same were expressly re-enacted herein.

Defendant to be allowed to pay money into Court in certain actions by judge's order.

Sect. 21.—It shall and may be lawful for the defendant in all personal actions, (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching the plaintiff's daughter or servant) by leave of any of the said Superior Courts where such action is pending, or a judge of any of the said superior Courts, to pay into Court a sum of money by way of compensation or amends, in such manner and under such regulations as to the payment of costs and the form of pleading as the said judges, or such eight or more of them as aforesaid, shall, by any rules or orders by them to be from time to time made, order and direct.

Allowing amendments to be made on the record in certain cases.

Sect. 23.—It shall be lawful for any Court of Record holding plea in civil actions, and any judge sitting at *nisi prius*, if such Court or judge shall see fit so to do, to cause the record, writ, or document on which any trial may be pending before any such Court or judge, in any civil action, or in any information in the nature of a *quo*

warranto, or proceedings on a *mandamus*, when any variance shall appear between the proof and the recital or setting forth on the record, writ, or document on which the trial is proceeding, of any contract, custom, prescription, name or other matter, in any particular or particulars in the judgment of such Court or judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution, or defence, to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to the payment of costs to the other party, or postponing the trial to be had before the same or another jury, or both payment of costs and postponement as such Court or judge shall think reasonable; and in case such variance shall be in some particular or particulars in the judgment of such Court or judge not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution, or defence, then such court or judge shall have power to cause the same to be amended upon payment of costs to the other party, and withdrawing the record or postponing the trial as aforesaid, as such Court or judge shall think reasonable; and after any such amendment the trial shall proceed, in case the same shall be proceeded with in the same manner in all respects, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had appeared; and in case such trial shall be had at *nisi prius*, or by virtue of such writ as aforesaid, the order for the amendment shall be indorsed on the *postea* or writ as the case may be, and returned together with the record or writ, and thereupon such papers, rolls, and other records of the Court from which such record or writ issued, as it may be necessary to amend, shall be amended accordingly; and in case the trial shall be had in any Court of Record, then the order for the amendment shall be entered on the roll or other document upon which the trial shall be had; provided that it shall be lawful for any party who is dissatisfied with the decision of such judge at *nisi prius*, sheriff, or other officer, respecting his allowance of any such amendment, to apply to the Court from which

such record or writ issued for a new trial upon that ground, and in case any such Court shall think such amendment improper, a new trial shall be granted accordingly, on such terms as the Court shall think fit, or the Court shall make such other order as to them may seem meet.

Power to state a special case, without proceeding to trial.

Sect. 25.—It shall be lawful for the parties in any action or information after issue joined, by consent and by order of any of the judges of the said superior Courts, to state the facts of the case in the form of a special case for the opinion of the Court, and to agree that a judgment shall be entered for the plaintiff or defendant by confession, or of *nolle prosequi*, immediately after the decision of the case, or otherwise, as the Court may think fit; and the judgment shall be entered accordingly.

Executors suing in right of the testator to pay costs.

Sect. 31.—In every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the Court in which such action is brought, or a judge of any of the said superior Courts shall otherwise order, be liable to pay costs to the defendant in case of being nonsuited, or a verdict passing against the plaintiff, and in all other cases in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself; and the defendant shall have judgment for such costs, and they shall be recovered in like manner.

One or more of several defendants in any action having a *nolle prosequi* or a verdict, shall have costs.

Sect. 32.—Where several persons shall be made defendants in any personal action, and any one or more of them shall have a *nolle prosequi* entered as to him or them, or upon the trial of such action shall have a verdict pass for him or them, every such person shall have judgment for and recover his reasonable costs, unless, in the case of a trial, the judge before whom such cause shall be tried shall certify upon the record, under his hand, that there was a reasonable cause for making such person a defendant in such action.

Where *nolle prosequi* entered upon any count, &c.

Sect. 33.—Where any *nolle prosequi* shall have been entered upon any count, or as to part of any declaration, the defendant shall be entitled to, and have judgment for, and recover his reasonable costs in that behalf.

Plaintiff in *scire facias*, and plaintiff or defendant on demurrer, to have costs.

Sect. 34.—In all writs of *scire facias*, the plaintiff obtaining judgment on an award of execution shall recover his costs of suit upon a judgment by default as well as upon a judgment after plea pleaded or demurrer joined; and that where judgment shall be given either for or against a plaintiff or demandant, or for or against a defendant or tenant, upon any demurrer joined in any action whatever, the party in whose favour such judgment shall be given, shall also have judgment to recover his costs in that behalf.

Costs of special juries in case of a nonsuit. 6 G. 4, c. 50.

Sect. 35.—And whereas it is provided in and by a statute passed in the sixth year of the reign of his late Majesty,^a intituled “An Act for consolidating and amending the law relative to Jurors and Juries,” that the person or party who shall apply for a special jury, shall pay the fees for striking such jury and all the expences occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury, unless the Judge before whom the cause is tried shall, immediately after the verdict, certify under his hand upon the back of the record that the same was a cause proper to be tried by a special jury: And whereas the said provision does not apply in cases in which the plaintiff has been nonsuited, and it is expedient that a Judge shall have such power of certifying as well when a plaintiff is nonsuited as when he has a verdict against him; be it therefore enacted, that the said provision of the said last mentioned act of parliament, and every thing therein contained shall apply to cases in which the plaintiff shall be nonsuited, as well as to cases in which a verdict shall pass against him.

^a c. 50.

Power to compel the attendance of witnesses.

Sect. 40.—When any reference shall have been made by any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the Court by which such rule or order shall be made, or which shall be mentioned in such agreement, or for any judge, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order; and the disobedience to any such rule or order shall be deemed a contempt of Court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, shall also be served either together with or after the service of such rule or order: provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money, and payment of expences and for loss of time, as for and upon attendance at any trial: Provided also, that the application made to such Court or Judge for such rule or order, shall set forth the county where such witness is residing at the time, or satisfy such Court or Judge that such person cannot be found: Provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days, to be named in such order.

4 & 5 WILL. 4, c. 94.

An Act to enable his Majesty to invest trading and other companies with the powers necessary for the due conduct of their affairs, and for the security of the rights and interests of their creditors.

Decrees, judgments, &c, given against said company to extend to the property of such company, and to the person and effects of every member thereof.

Sect. 3.—Any decree, judgment, order, or interlocutor made or pronounced in any action, suit, or proceeding in any Court of Law or Equity against any officer of any such company, body, or association named as aforesaid, shall have the like effect and operation upon and against

the property, funds, and effects of such company, body, or association, and upon and against the persons and property of every and any member thereof, and if such company, body, or association, and such member and members thereof, had been a party or parties to such action, suit, or proceeding, as if such decree, judgment, order, or interlocutor had been pronounced against such company, body, or association, or against every or any such member or members thereof; provided that no diligence or execution shall pass or be issued thereon without leave first granted in open Court by the Court in which such decree, judgment, order, or interlocutor was made or pronounced, and which motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after such person or persons shall have ceased to be a member of such company, body, or association.

5 & 6 WILL. 4, c. 74.

An Act for the more easy recovery of tithes.

Manner of recovering tithes due from Quakers.

Sect. 2.—In case any suit or other proceeding has been prosecuted or commenced, or shall hereafter be prosecuted or commenced, in any of his Majesty's Courts in England or Ireland, for recovering any great or small tithes, *modus*, or composition for tithes, rate or other ecclesiastical demand, subtracted, unpaid, or withheld by or due from any Quaker, no execution or decree or order shall issue or be made against the person or persons of the defendant or defendants, but the plaintiff or plaintiffs shall and may have his execution or decree against the goods or other property of the defendant or defendants; and in case any person now is detained in custody in England or Ireland, under any execution or decree in such suit or proceeding, the sheriff or other officer having such person in his custody, shall forthwith discharge him therefrom; and the plaintiff or plaintiffs in such suit or proceeding shall and may, notwithstanding such discharge, issue any other execution, or take any other proceeding for recovering his demand and his costs out of the property, real or personal, of the person so discharged.

5 & 6 WILL. 4, c. 83.

An Act to amend the law touching Letters Patent for Inventions.

As to costs for infringing letters patent.

Sect. 6.—In any action brought for infringing the right granted by any letters patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the same shall be had, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections, as well as the counts in the declaration, and without regard to the general result of the trial.

1 & 2 VICT. c. 45.

An Act to extend the jurisdiction of the Judges of the Superior Courts of Common Law; to amend chapter fifty-six of the first year of her present Majesty's reign, for regulating the admission of attornies; and to provide for the taking of special bail in the absence of the Judges.

Every Judge of the Courts at Westminster may transact such business as may now be transacted by a single Judge, although the Courts have no common jurisdiction therein.

Sect. 1.—Every Judge of the Courts of Queen's Bench, Common Pleas, or Exchequer, shall have equal jurisdiction, power and authority to transact out of court such business as may, according to the course and practice of the court, be so transacted by a single judge, relating to any suit or proceeding in either of the said Courts of Queen's Bench or Common Pleas, or on the Common Law or Revenue side of the said Court of Exchequer, or relating to the granting writs of *certiorari* or *habeas corpus*, or the admitting prisoners on criminal charges to bail, or the issuing of extents or other process for the recovery of debts due to her Majesty, or relating to any other matter or thing usually transacted out of court, although the said Courts have no common jurisdiction therein, in like manner as if the judge transacting such business had been a judge of the court to which the same by law belongs.

Any judge may exercise such powers for the relief of sheriffs &c., as may, by virtue of 1 & 2 W. 4, c. 58, s. 6, be exercised by the several Courts.

Sect. 2.—It shall be lawful for any Judge of the said Courts of Queen's Bench, Common Pleas, or Exchequer, with respect to any such process issued out of any of those Courts, or for any Judge of the said Court of Common Pleas of the county palatine of Lancaster, or Court of Pleas of the county palatine of Durham, (being also a Judge of one of the said three Superior Courts) with respect to process issued out of the said Courts of Lancaster and Durham respectively, to exercise such powers and authorities for the relief and protection of the sheriff or other officer as may by virtue of the said last mentioned act be exercised by the said several courts respectively, and to make such order therein as shall appear to be just; and the costs of such proceeding shall be in the discretion of such judge.

After 1st November, 1888, any person admitted an attorney in one of the Courts at Westminster, may practise in any other Court, upon signing the roll of such Court.

Sect. 3.—After the first day of November next, any person entitled to be admitted an attorney of any of the said Courts at Westminster, shall, after being sworn in and admitted as an attorney of any one of the said courts, be entitled to practise in any other of the said courts upon signing the roll of such court, and not otherwise, in like manner as if he had been sworn in and admitted an attorney of such court; provided that no additional fee besides those payable under the said last mentioned act, shall be demanded or paid, and that the fees payable for such admission shall be apportioned in such manner as the judges of the said Courts, or any eight of them, shall, by any rule or order made in term or vacation, direct and appoint.

Judges of Court at Westminster, may issue commissions for taking special bail.

Sect. 4.—The Chief Justice and other the justices of the Court of Queen's Bench for the time being, or any two of them, whereof the Chief Justice for the time being to be one, for the said Court of Queen's Bench, and the Chief Justice of the Court of Common Pleas, and other the justices there for the time being, or any two of them, whereof the Chief Justice of the same Court to be one, for the said Court of Common Pleas, and also the Chief Baron

and Barons of the Coif of the Court of Exchequer, for the time being, or any two of them, whereof the Chief Baron for the time being to be one, for the said Court of Exchequer, may, by one or more commission or commissions under the several seals of the said respective courts, from time to time, as need shall require, empower such persons, not being attornies or solicitors, as they shall think fit and necessary, to take and receive during such time, in vacation only, as shall be specified in the commission or commissions, all and every such recognizance or recognizances of bail or bails as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so empowered in any action or suit depending, or hereafter to be depending in the said respective courts, or any of them, in such manner and form, and by such recognizance or bail-piece, as the Justices and Barons of the said respective courts have used to take the same; which said recognizance or recognizances of bail or bail-piece, so taken as aforesaid, shall be afterwards filed in the proper office or offices where the same are now filed; which recognizance of bail or bail-piece so taken and filed, shall be of the like effect as if the same were taken before any of the said Justices and Barons; and for the taking every such recognizance or recognizances of bail or bail-piece, the person or persons so empowered shall receive only the like fee as is now payable upon taking and filing the recognizance or bail-piece, and no more.

Cognisors of bail may justify before such commissioners.

Sect. 5.—The cognisor or cognisors of such bail or bails, may justify him or themselves before any of the said commissioners during such time only, being in vacation, as shall be specified in their respective commissions; and the said commissioners are hereby empowered to examine the sureties on oath, and allow or reject them as shall seem fit.

1 & 2 VICT. c. 110.

An Act to Abolish Arrest on Mesne Process in civil actions, except in certain cases, &c.

Sheriff may proceed to arrest defendant.—Defendant to remain in custody until he finds bail, or makes a deposit.

Sect. 4.—“That the sheriff or other officer,^a to whom any such writ of *capias* shall be directed, shall, within one calendar month after the date thereof, including the day of such date, but not afterwards, proceed to arrest the defendant thereupon; and such defendant, when so arrested, shall remain in custody until he shall have given a bail-bond to the sheriff, or shall have made deposit of the sum indorsed on such writ of *capias*, together with 10*l.* for costs, according to the present practice of the said Superior Courts; and all subsequent proceedings as to the putting in and perfecting special bail, or of making deposit and payment of money into Court instead of putting in and perfecting special bail, shall be according to the like practice of the said Superior Courts,^b or as near thereto as the circumstances of the case will admit.”

Defendant may apply for his discharge forthwith.—Judge may discharge defendant or not.—Order of Judge may be appealed from.

Sect. 6.—It shall be lawful for any person arrested upon any such writ of *capias* to apply at any time after such arrest to a Judge of one of the Superior Courts at Westminster, or to the Court in which the action shall have been commenced, for an order^c or rule^d on the plaintiff in such action to shew cause why the person arrested should not be discharged out of custody; and that it shall be lawful for such Judge or Court to make

^a This will be in the city of London, or other places where they have two sheriffs, “The sheriffs.” In the Cinque Ports, “To the constable of Dover Castle.” In Berwick-upon-Tweed, “To the Mayor and bailiffs of the borough of Berwick-upon-Tweed.”

^b The Queen’s Bench, Common Pleas, and Exchequer of Pleas.

^c The application to a Judge will be for an “order.”

^d If to the Court, for a “rule.”

absolute or discharge such order or rule, and to direct the costs of the application to be paid by either party, or to make such other order^e therein as to such Judge or Court shall seem fit; provided that any such order made by a Judge may be discharged or varied by the Court on application made thereto by either party dissatisfied with such order.

Sheriff empowered to seize money, &c., and to pay same to execution creditor; and to sue for amounts secured by bills of exchange and other securities. Proviso.

Sect. 12.—By virtue of any writ of *fiery facias* to be sued out of any superior or inferior Court after the time appointed for the commencement of this act, or any precept in pursuance thereof, the sheriff or other officer having the execution thereof, may and shall seize and take any money or bank notes, (whether of the Governor and Company of the Bank of England, or of any other bank or bankers) and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money belonging to the person against whose effects such writ of *fiery facias* shall be sued out; and may and shall pay or deliver to the party suing out such execution, any money or bank notes which shall be so seised, or a sufficient part thereof;^f and may and shall hold^g any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, as a security or securities for the amount by such writ of *fiery facias* directed to be levied, or so much thereof as shall not have been otherwise levied and raised, and may sue^h in the name of such sheriff or other officer for the recovery of the sum or sums secured thereby, if and when the time for payment thereof shall have arrived; and that the payment to such sheriff or other officer by the party

^e This may include also the costs “*of and occasioned by the arrest*” or “*detainer.*”

^f To defray the amount required to be levied, sheriff's poundage, and expenses.

^g If a bill of exchange or promissory note be seized, the sheriff ought, like other parties, to present them for payment, and to give due notice of dishonour.

^h In this case the sheriff ought to set forth succinctly in the declaration, the writ of *fiery facias*, and the seizing by him, under it, of the security.

liable on any such cheque, bill of exchange, promissory note, bond, specialty, or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment, or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty, or other security; and such sheriff or other officer may and shall pay over to the party suing out such writ the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount of such writ directed to be levied; and if after satisfaction of the amount so to be levied, together with sheriff's poundage and expences, any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued: provided that no such sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty, or other security, unless the party suing out such execution shall enter into a bond, with two sufficient sureties, for indemnifying him from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof, the expence of such bond to be deducted out of any money to be recovered in such action."

Order of Judge to be made in the first instance *ex parte*; and on notice to the bank or company to operate as a *distringas*.

Sect. 15.—And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares, hereby authorised to be charged for the benefit of the judgment creditor, under an order of a judge, be it further enacted, that every order of a judge, charging any government stock, funds, or annuities, or any stock or shares in any public company under this act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to shew cause only; and such order, if any government

¹ If the bond be given, the sheriff would be bound to sue; and on his refusal, an action on the case would lie against him at the suit of the creditor.

stock, funds, or annuities, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order,^j shall restrain the Governor and Company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner^j restrain such public company from permitting a transfer thereof; and that if after notice of such order to the person or persons to be restrained thereby, or in case of corporations, to any authorised agent of such corporation, and before the same order shall be discharged or made absolute, such corporation, or person or persons, shall permit any such transfer to be made, then and in such case, the corporation or person or persons so permitting such transfer, shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that unless the judgment debtor shall, within a time to be mentioned in such order, show to a judge of one of the said Superior Courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute:^k Provided that any such judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.

Decrees and orders of Courts of Equity, &c., to have effect of Judgments.

Sect. 18.—All decrees and orders of Courts of Equity, and all rules of Courts of Common Law, and all orders of

^j This means "*upon service.*" The order to shew cause should be filed at the Bank of England, or with the company, as the case may be.

^k And the like practice will be necessary as to the order absolute.

the Lord Chancellor or of the Court of Review in matters of Bankruptcy, and all orders of the Lord Chancellor in matters of lunacy, whereby any sum of money or any costs, charges, or expences shall be payable to any person, shall have the effect of judgments in the Superior Courts of Common Law, and the persons to whom any such monies or costs, charges or expences, shall be payable, shall be deemed judgment creditors within the meaning of this act; and all powers hereby given to the Judges of the Superior Courts of Common Law with respect to matters depending in the same Courts, shall and may be exercised by Courts of Equity¹ with respect to matters therein depending, and by the Lord Chancellor and the Court of Review^m in matters of Bankruptcy, and by the Lord Chancellor in matters of lunacy; and all remedies hereby given to judgment creditors, are in like manner given to persons to whom any monies or costs, charges or expences, are by such orders or rules, respectively directed to be paid.

For removal of judgment of inferior Courts.

Sect. 22.—In all cases where final judgment shall be obtained in any action or suit in any inferior Court of Record in which at the time of passing this act, a barrister of not less than seven years' standing shall act as judge, assessor, or assistant in the trial of causes,ⁿ and also in all cases where any rule or order shall be made by any such inferior Court of Record as aforesaid, whereby any sum of money, or any costs, charges, or expences, shall be payable to any person, it shall be lawful for the judges of any one of her Majesty's Superior Courts of Record at Westminster, or if such inferior Court be within the Court of Common Pleas at Lancaster, for the judges of the Court of Common Pleas at Lancaster, or for any judge of any of the said Courts at chambers, either in term or vacation, upon the application of any person who at the time of the commencement of this act, shall have recovered, or who shall at any time thereafter re-

¹ This will include the Court of Chancery at Lancaster.

^m 1 & 2 W. 4, c. 57.

ⁿ This is the case in the Palace Court; the Mayor's Court, (London); the Sheriff's Court, (London); and the Court of Passage, Liverpool.

cover such judgment, or to whom any money or costs, charges or expences, shall be payable by such rule or order as aforesaid, or upon the application of any person on his behalf, and upon the production of the record^o of such judgment, or upon the production of such rule or order, such record, or rule, or order, as the case may be, being respectively under the seal of the inferior Court and the signature of the proper officer thereof, to order and direct the judgment, or as the case may be, the rule or order of such inferior Court to be removed into the said Superior Court, or into the Court of Common Pleas at Lancaster, as the case may be, and immediately thereupon such judgment, rule, or order, shall be of the same force, charge, and effect, as a judgment recovered in, or a rule or order made by such Superior Court, and all proceedings shall and may be immediately had and taken thereupon, or by reason or in consequence thereof, as if such judgment so recovered, or rule or order so made, had been originally recovered in or made by the said Superior Court, or into the Court of Common Pleas at Lancaster, as the case may be ; and all the reasonable costs and charges attendant upon such application and removal, shall be recovered in like manner as if the same were part of such judgment, or rule, or order :^p Provided always, that no such judgment, rule, or order, when so removed as aforesaid, shall affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, any further than the same would have done if the same had remained a judgment, rule, or order of such inferior Court, unless and until a writ of execution thereon, shall be actually put into the hands of the sheriff or other officer appointed to execute the same.

^o This must be a record, not a transcript only.

^p There must be a suggestion in the writ of execution as to these costs and charges.

Practical Forms.

Indorsement of Costs on Writ.^a

The plaintiff claims \$1. for debt, and \$1. for costs; and if the amount thereof be paid to the plaintiff or his attorney within four days from the service hereof, further proceedings will be stayed.

Countermand of notice of trial.

In the Queen's Bench,
Common Pleas, or
Exchequer of Pleas. }

Between { John Doe, p'laintiff,
and
Richard Roe, defendant.

I do hereby countermand the notice of trial in this cause. Dated the day of , 184 .

To Mr. _____, Defendant's attorney. Yours, &c. _____, Plaintiff's attorney.

Continuance of notice of trial.

I do hereby continue the notice of trial in this cause until the second sittings in this present term, to be holden at Westminster Hall, in and for the county of Middlesex.

Continuance of inquiry.

I do hereby continue the notice of executing the writ of enquiry, given you in this cause, to the day of next, when the same will be executed at the same place, and between the hours of and , at . Dated the day of , 18 .
Yours, &c.

To Mr. *L. M.* the above }
named defendant. }

Notice of countermand.

I do hereby countermand the notice of executing the writ of enquiry, given you in this cause. Dated the day of , 18 .

To Mr. (*as above.*)

Yours, &c.

Notice of attending by counsel.

In the Queen's Bench.

Between { John Doe, plaintiff,
and
Richard Roe, defendant.

Take notice that the plaintiff (*or* defendant) will attend by counsel on the execution of the writ of enquiry in this cause. Dated the day of , 18 .

To Mr. C. D., the above }
named defendant. }

Yours, &c.

J. L.,

(*or to the attorney of the
defendant, if any.*)

Plaintiff's attorney.

Affidavit of service of notice on the opposite attorney for admission of documents to entitle party to costs of proving same, and there is not any inspection made.

E. F., of , in the county of , gentleman, and attorney in this cause for the above named plaintiff, maketh oath and saith, that being advised that certain deeds and other written documents, the particulars whereof are mentioned and set forth at the foot of the notice hereto annexed, and the same being in his judgment and belief necessary and material to be adduced in evidence on the trial of this cause, he, this deponent, in order to obtain an admission thereof, did on the day of instant, serve a copy of the said notice hereto annexed, with a description of the documents thereunder written, on Mr. , the attorney in this cause for the said defendant, by delivering to and leaving the same with a clerk of the said Mr. , at his office in Chancery Lane; but the said Mr. did not, nor did any person on his behalf, attend to inspect the said deeds and documents at the time and place required by the said notice, nor at any time since hath any application been made to inspect the same, and the admission thereof hath not been tendered or offered as required by the said notice.

or of the agent who served the writ of *subpœna*, and the sums paid to them respectively for their loss of time, travelling, and expenses, are truly and correctly hereunder stated as set opposite their respective names.

Names of Witnesses.	Place of Abode.	Occupation.	Distance from Attorney or Agent serving Subpœna.	Distance from Assizes.	Time Absent.	Sums paid for Loss of Time, Travelling, and Expenses.

That this deponent's place of abode is distant from _____, miles, and that he was necessarily absent upon the trial of this cause _____ days, and that he, this deponent, was not nor were the several witnesses, or any or either of them to his knowledge or belief, attending at the said _____ on any other business. That _____ l. was paid to the sheriff for returning the *distriugas*, and _____ l. was paid for entering the cause, and _____ l. for Court fees; and the following fees were paid to counsel: that is to say, to Mr. _____, with brief, and his clerk _____ l.; and to Mr. _____, and his clerk, _____ l.; that a retainer was given to counsel for _____, and a fee of 1*l.* 3*s.* 6*d.* paid to him and clerk; and that there was a consultation on behalf of _____, and the following fees were paid to counsel thereon, viz. to Mr. _____ and his clerk _____ l., and to Mr. _____ and his clerk _____ l.

[N. B. Notices to produce documents and any other special matter to be added, and if the writ and any other proceedings, was served at a distance, the affidavit should state the distance from the nearest attorney.]

Writ of elegit upon a judgment in the Court of Queen's Bench, in an action of assumpsit.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the Sheriff^a of greeting : Whereas *A. B.*, lately in our Court before us^b at Westminster, by the judgment of the same Court recovered against *C. D.* *l.*, which, in our said Court before us, were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, and afterwards the said *A. B.* came into our said Court before us, and, according to the form of the statutes in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said *C. D.* or any person in trust for him was seised or possessed of on the day of , in the year of our Lord , on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said *C. D.* on the said day of ^c, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, according to the form of the said statutes, until the damages aforesaid, together with interest upon

^a In the city of London, and other counties having two sheriffs, the writ must be directed "*To the Sheriffs.*"

^b In the Common Pleas say "*before our Justices of the Bench;*" and in the Exchequer of Pleas "*before the Barons of our Exchequer.*"

^c The day on which the judgment was entered up.

the said sum of *l.*, at the rate of four pounds *per centum per annum*, from the day of , in the year of our Lord ,^d shall have been levied. Therefore we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said day of ,^d or at any time afterwards, or over which the said *C. D.* on the said day of ,^e or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages aforesaid, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us at Westminster immediately after execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisal, and have there then this writ. Witness, Thomas Lord Denman,^f at Westminster, the day of , in the year of our Lord .

^d The day on which the judgment was entered up; or in case the judgment was entered up prior to the 1st of October, 1838, say "from the first day of October, in the year of our Lord, 1838."

^e The day on which the judgment was entered up.

^f In the Common Pleas, say "*Sir Nicholas Conyngham Tindal, Knight*;" and in the Exchequer of Pleas "*James Lord Abinger*."

ments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said *C. D.* or any person in trust for him was seised or possessed of on the said day of ,^a or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.*, as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of *l.*, together with interest as aforesaid, shall have been levied, and in what manner you shall have executed this our writ, make appear to us at Westminster, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness, Thomas, Lord Denman, at Westminster, the day of , in the year of our Lord .

Writ of elegit on a rule made in the Court of Q. B., for payment of money and costs.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of , greeting: Whereas lately in our Court before us at Westminster, by a rule of the said Court, entitled &c., (*as the case may be*) the sum of *l.* was, by the said Court, ordered to be paid by *C. D.* to *A. B.*, together with the costs of the said rule, which said costs were afterwards, on the day of taxed and allowed by our said Court at the sum of *l.*; and afterwards the said *A. B.* came into our said Court before us, and according to the form of the statute in such case made and provided, chose to be delivered to him, all the goods and chattels of the said *C. D.*, in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and tenements of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him,

^a The day on which the rule was made.

was seised or possessed of on the ^a day of , in the year of our Lord , or at any time afterwards, or over which the said *C. D.* on the said ^a day of , or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels, as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of *l.* and *l.*, with interest upon the said two several sums of *l.* and *l.*, at the rate of four pounds *per centum per annum*, from the said ^b day of , shall have been levied. Therefore we command you, that without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said ^c day of , or at any time afterwards, or over which the said *C. D.*, on the said ^c day of , or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.*, as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of *l.* and *l.*, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us at Westminster, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall

^a The day on which the costs of the rule were taxed.

^b The day on which the costs of the rule were taxed; or in case that day were prior to the 1st October, 1838, say, "from the 1st day of October, in the year of our Lord, 1838."

^c The day on which the costs of the rule were taxed.

make the said extent and appraisement, and have there then this writ. Witness, Thomas Lord Denman, at Westminster, the day of , in the year of our Lord, .

Writ of elegit on a judgment of an inferior Court, in an action of assumpsit removed into the Court of Q. B.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of , greeting: Whereas *A. B.*, lately in (*insert the style of the Court*) by the judgment of the said Court, recovered against the said *C. D.* the sum of l., which, in the said Court, were adjudged to the said *A. B.*, for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings, then lately made by the said *C. D.*, to the said *A. B.*, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.*, is convicted, as appears to us of record; And whereas the said judgment was afterwards, on the day of , in the year of our Lord , removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, (*or* "of , one of the justices of the said Court, before us at Westminster," *as the case may be*), in pursuance of the statute, in that case made and provided, and the costs attendant upon the application for the said order, and upon the said removal were afterwards, on the day of , in the year of our Lord, , taxed and allowed by our said Court, before us at Westminster, at the sum of l., and afterwards the said *A. B.* came into our said Court, before us at Westminster, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.*, in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of, on the said^a day of , in the

^a The day on which the costs of removing the judgment were taxed.

year of our Lord , aforesaid, or at any time afterwards, or over which the said *C. D.*, on the said ^b day of , or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages aforesaid and the said costs so taxed and allowed by our said Court, before us at Westminster as aforesaid, together with interest upon the said two several sums of *l.* and *l.*, at the rate of four pounds *per centum per annum*, from the ^b day of , aforesaid shall have been levied. Therefore we command you, that without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.*, in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of, on the said ^b day of , or at any time afterwards, or over which the said *C. D.*, on the said ^b day of , or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.*, as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the damages aforesaid, and the said costs so taxed and allowed by our said Court, before us at Westminster as aforesaid, and interest as aforesaid shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement,

^b The day on which the costs of removing the judgment were taxed.

and have there then this writ. Witness, Thomas, Lord Denman, at Westminster, the day of , in the year of our Lord .

Writ of elegit on an order for payment of money, made in an inferior Court, and removed into the Court of Q. B.

VICTORIA, &c., to the sheriff of , greeting: Whereas lately in (*insert the style of the Court*), by a rule of the said Court, entitled &c., (*as the case may be*), the sum of l. was by the said Court ordered to be paid by C. D. to A. B., and whereas the said rule was afterwards, on the day of , in the year of our Lord , removed into our Court, before us at Westminster, by virtue of an order of our said Court, before us at Westminster (*or "of , one of the justices of our said Court before us at Westminster," as the case may be*), in pursuance of the statute in that case made and provided, and the costs attendant upon the application for the said last mentioned order, and upon the said removal, were afterwards, on the day of , in the year of our Lord , taxed and allowed in our said Court, before us at Westminster, at the sum of l., and afterwards the said A. B. came into our said Court before us at Westminster, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D., in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of, on the said^a day of , in the year of our Lord , or at any time afterwards, or over which the said C. D., on the said day of , or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels, as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and

^a The day on which the costs of removing the rule of the inferior Court into the Court of Q. B. were taxed.

tenure thereof, to him and to his assigns, until the said two several sums of *l.* and *l.*, together with interest on the said two several sums of *l.* and *l.*, at the rate of four pounds *per centum per annum*, from the said ^b day of , shall have been levied. Therefore we command you, that without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.*, in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said ^b day of , or at any time afterwards, or over which the said *C. D.* on the ^b day of , or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.*, as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments, respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of *l.* and *l.*, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness, Thomas, Lord Denman, at Westminster, the day of , in the year of our Lord .

Writ of elegit on a rule for payment of money and costs, made in an inferior Court, and removed into Q. B.

VICTORIA, &c., to the sheriff of , greeting :
Whereas lately in (*insert the style of the Court*), by a rule of the said Court, entitled, &c. (*as the case may be*) the sum of *l.* was by the said Court ordered to be paid by *C. D.* to *A. B.*, together with the costs of the

^b The day on which the costs of removing the rule of the inferior Court into the Court of Q. B. were taxed.

said rule, which said costs were afterwards, on the day of _____, in the year of our Lord _____, taxed and allowed by the said Court at the sum of _____ l.; and whereas the said rule was afterwards, on the _____ day of _____, in the year of our Lord _____, removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, (or "of _____, one of the justices of our said Court before us at Westminster," *as the case may be,*) in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last mentioned order, and upon the said removal, were afterwards, on the _____ day of _____, in the year of our Lord _____, taxed and allowed in our said Court before us, at the sum of _____ l., and afterwards the said *A. B.* came into our said Court before us at Westminster, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him was seised or possessed of on the said^a day of _____, or at any time afterwards, or over which the said *C. D.*, on the said^a day of _____, or at any time afterwards, had any disposing power which he might, without the assistance of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums of _____ l. and _____ l. and _____ l., together with interest upon the said three several sums of _____ l. and _____ l. and _____ l., at the rate of four pounds *per centum per annum*, from the said^a day of _____, shall have been levied: Therefore we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your baili-

* The day on which the costs of removing the rule of the inferior Court into the Court of Q. B. were taxed.

wick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold and customary tenure in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of, on the said^a day of , or at any time afterwards, or over which the said *C. D.* on the said^a day of , or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums of £. and £. and £., together with interest as aforesaid, shall have been levied; and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness, Thomas, Lord Denman, at Westminster, the day of , in the year of our Lord .

*Writ of fieri facias on a judgment in the Court of Q. B.
in an action of assumpsit.*

VICTORIA, &c., to the sheriff of , greeting: We command you that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made £. which *A. B.* lately in our Court before us at Westminster, recovered against him for his damages which he had sustained as well on occasion of the not performing certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, together with interest upon the said sum of £. at the rate of four

^a The day on which the costs of removing the rule of the inferior Court into the Court of Q. B. were taxed.

pounds *per centum per annum*, from the^a day of , in the year of our Lord , on which day the judgment aforesaid was entered up, and have that money with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.* for his damages and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign, you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, and have there then this writ. Witness, Thomas, Lord Denman, at Westminster, on the day of , in the year of our Lord .

Writ of fieri facias on an order of the Court of Q. B. for payment of money.

VICTORIA, &c., to the sheriff of , greeting: We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made *l.* which lately in our Court before us at Westminster, by a rule of our said Court entitled, &c. (*as the case may be*) were by the said Court ordered to be paid by the said *C. D.* to *A. B.*, and that of the said goods and chattels of the said *C. D.* in your bailiwick, you further cause to be made interest upon the said sum of *l.*, at the rate of four pounds *per centum per annum* from the^b day of , in the year of our Lord , on which day the said rule was made, and have that money, together with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.* for the said sum of money so ordered to be paid by the said *C. D.* to the said *A. B.* and for interest as aforesaid, and that you do all such things as by the

^a The day on which the judgment was entered up, or if entered up prior to the 1st of October, 1838, say "from the 1st of October, in the year of our Lord 1838," omitting the words "on which day the judgment aforesaid was entered up."

^b The day on which the rule was made, or if it were made prior to the 1st of October, 1838, say "from the 1st of October, in the year of our Lord 1838," omitting the words "on which day the said rule was made."

statute passed in the second year of our reign, you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, and have there then this writ. Witness, Thomas Lord Denman, at Westminster, on the day of _____, in the year of our Lord _____.

*Writ of fieri facias on an order of the Court of Q. B.
for payment of money and costs.*

VICTORIA, &c., to the sheriff of _____, greeting:
We command you that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made _____ *l.*, which lately in our Court before us at Westminster, by a rule of our said Court entitled, &c. (*as the case may be*) were by the said Court ordered to be paid by the said *C. D.* to *A. B.*, together with the costs of the said rule, which said costs were afterwards, on the _____ day of _____, in the year of our Lord _____, taxed and allowed by our said Court at the sum of _____ *l.*, and that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made interest upon the said two several sums of _____ *l.* and _____ *l.*, at the rate of four pounds *per centum per annum* from the said ^a day of _____ in the year of our Lord _____, and have that money, together with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.* for the said sum of money so ordered to be paid by the said *C. D.* to the said *A. B.*, and for costs and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign, you are authorised and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, and have there then this writ. Witness, Thomas Lord Denman, at Westminster, on the day of _____, in the year of our Lord _____.

^a The day on which the costs of the rule were taxed, or if that were prior to the 1st of October 1838, say "from 1st day of October in the year of our Lord 1838."

Writ of fieri facias on a judgment of an inferior Court in an action of assumpsit removed into the Court of Queen's Bench.

VICTORIA, &c., to the sheriff of _____, greeting :
 We command you that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made _____ *l.*, which *A. B.* lately in (*insert the style of the Court*) by the judgment of the said Court recovered against *C. D.* for his damages, which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, and which judgment was afterwards on the _____ day of _____ in the year of our Lord _____, removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, (*or of _____, one of the justices of the said Court before us at Westminster, as the case may be,*) in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said order, and upon the said removal, were, on the _____ day of _____, in the year of our Lord _____, taxed and allowed by our said Court before us at Westminster, at the sum of _____ *l.* And we further command you that of the said goods and chattels of the said *C. D.*, in your bailiwick, you further cause to be made the said sum of _____ *l.*^a together with interest on the said two several sums of _____ *l.* and _____ *l.* at the rate of four pounds *per centum per annum*, from the said _____^b day of _____, in the year of our Lord _____, and that you have that money with such interest as aforesaid before us at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.* for his damages aforesaid, and for costs and interest as aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at

* The costs attendant upon the removal of the judgment out of the inferior Court into the Court of Q. B.

^b The day on which the costs of removal were taxed.

Westminster immediately after the execution thereof, and have there then this writ. Witness, Thomas Lord Denman, at Westminster, on the day of , in the year of our Lord .

Writ of fieri facias on an order for payment of money, made in an inferior Court, and removed into the Court of Queen's Bench.

VICTORIA, &c., to the sheriff of , greeting :
 We command you that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made *l.*, which lately in (*insert the style of the Court*) by a rule of the said Court, intituled, &c. (*as the case may be*) were by the said Court ordered to be paid by the said *C. D.* to *A. B.*, and which rule was afterwards, on the day of in the year of our Lord , removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, (*or of , one of the justices of our said Court before us at Westminster, as the case may be*) in pursuance of the statute in that case made and provided; and the costs attendant upon the application for the said last mentioned order, and upon the said removal, were, on the day of in the year of our Lord , taxed and allowed by our said Court before us at Westminster, at the sum of *l.*: And we further command you, that of the said goods and chattels of the said *C. D.* in your bailiwick, you further cause to be made the said sum of *l.*^a together with interest on the said two several sums of *l.* and *l.*, at the rate of four pounds *per centum per annum*, from the said ^b day of , and that you have that money, with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.* for the said monies by the said rule first above mentioned ordered to be paid by the said *C. D.* to the said *A. B.*, and for costs and interest as aforesaid: And that you do all such things as by the statute passed

^a The costs of removing the rule of the inferior Court into the Court of Q. B.

^b The day on which the costs of removing the rule of the inferior Court into the Q. B. were taxed.

in the second year of our reign, you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ, make appear to us at Westminster, immediately after the execution thereof, and have there then this writ. Witness, Thomas Lord Denman, at Westminster, on the day of , in the year of our Lord .

Writ of fieri facias on an order for payment of money and costs, made in an inferior Court and removed into the Court of Queen's Bench.

VICTORIA, &c. to the sheriff of , greeting :
 We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made *l.*, which lately in (*insert the style of the Court*) by a rule of the said Court intituled, &c. (*as the case may be*) were by the said Court ordered to be paid by the said *C. D.* to *A. B.* ; and also *l.* for the costs of the said rule, by the said Court also ordered to be paid by the said *C. D.* to the said *A. B.*, which said rule was afterwards, on the day of , in the year of our Lord , removed into our Court before us at Westminster, by an order of our said Court before us at Westminster, (*or of , one of the justices of our said Court before us at Westminster, as the case may be*) in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last mentioned order, and upon the said removal were, on the day of , in the year of our Lord , taxed and allowed by our said Court before us at Westminster at the sum of *l.*; and we further command you that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said sum of *l.*,^a together with interest on the said three several sums of *l.* and *l.*, and *l.*, at the rate of four pounds *per centum per annum* from the said^b day of , in the year of our Lord , and that you have that money, with such

^a The costs of removing the rule from the inferior Court into the Court of Queen's Bench.

^b The day on which the costs of removing the rule from the inferior Court into the Court of Queen's Bench were taxed.

interest as aforesaid before us at Westminster immediately after the execution hereof, to be rendered to the said *A. B.* for the monies by the said rule first above mentioned ordered to be paid by the said *C. D.* to the said *A. B.*, and for costs and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and in what manner you shall have executed this our writ, make appear to us at Westminster immediately after the execution thereof, and have there then this writ. Witness, Thomas Lord Denman, at Westminster, on the day of , in the year of our Lord

.

INDEX.

ABATEMENT,

- plea in, of the pendency of prior action, 15
 - quasi puis darrien continuance*, effect of, 73
 - for non-joinder, 33, 82
 - effect of *non pros*, 68
 - verdict in second action after, 33, 82
 - cassetur brevis* entered to, 14
 - demurrer to, 7, 72
 - statute relating to, 184
- issue of *nil tiel record* on pleadings in, 72
- misnomer not to be pleaded in, 184

ACCOUNT,

- balance of, costs in action for, 26

ACT. See *Statute*.

ACTIONS,

- personal, 7
 - where maintainable, 6
 - commencement of, 10
 - when plaintiff entitled to costs, 7, 26—39
 - pauper plaintiff entitled, 7
 - on a judgment in former action, 29, 170
 - only one judgment, as to costs in, 4
 - in *assumpsit*,
 - common counts, 65
 - general issue in, 25
 - barred by statute, 33
 - subsequent acknowledgment, *ib.*
 - debt on simple contract,
 - common counts, 65
 - for sum under 20*l.*, 30

ACTIONS, (*continued*)

personal,

debt

by parson, &c. for tithes, *ib.* 153
 for balance of account, 26
 on bond, 153
 when judgment to remain, *ib.*

covenant,

heir sued on, false plea by, 36
 devisee sued on, *ib.*

trespass,

by inferior tradesman, &c. 28
 plea justifying battery, 26, 29
 putting freehold, &c. in issue,
 26, 27

one of several defendants acquitted, 32
 less than 40s. recovered, 26
 for malicious injury to property, 29
quare clausum fregit for mesne profits,
 125

statutes relating to, 146, 152
 for seizure under custom laws, 29

case,

for injury to reversionary interest, 86
 scandalous words, 29
 waste, 86, 153

under Recovery of Tenements Act,
 25, 32

by husband for injury to wife, 25
 patentee for infringement of pa-
 tent, 30, 191
 notice of objections, 16

mixed,

ejectment, 34

nominal plaintiff nonsuited, *ib.*

costs, on verdict for lessor of the plain-
 tiff, *ib.*

writ of right of dower, &c. 4
quare impedit, 4, 5

penal,

by common informers, 7

verdict for defendant, costs in, 57

by executor or administrator, 31

against executor, &c. for wrong done by testator, 36

testator's lands *bona fide* aliened, 37

plea by, if false, 36

payment or release, *ib.*

infant, 34

ADMINISTRATOR. See *Executor*.

ADMISSION

- of documents, 19, 42, 71
 - mode of proceeding to obtain, 19
 - costs of, 19, 20
 - proving documents not admitted, 31
 - service of notice for, form of affidavit, 201
 - refused after inspection, form of affidavit, 202

AFFIDAVIT

- of increase, what to contain, 51
 - form of, 202
- improperly framed, 105
- on which rule moved, faulty, 104
- unnecessarily long, 105
- containing scandalous matter, *ib.*
- forms of, 201—203

AGENT,

- lien of, against all claimants, 96
 - his own client, *ib.*

ALLOCATUR,

- when and how made out, 54
- proceedings upon, 93

AMENDMENT

- of writ, 11, 59
 - or indorsement, *ib.*
 - what further time allowed after, 59
- declaration after plea pleaded, 67
- pleadings after demurrer, 18, 72
- in rule, 103
- of issue in fact, 72, 73
 - jury process, 21
 - nisi prius* record by judge, 23
 - statute relating to, 185
- writ of *scire facias*, 59
- in dower or *quare impedit*, 4
 - by the crown, terms of, 3
- costs of, in discretion of court, 7
 - upon formal amendments, 89
 - when a condition precedent, 18
 - taxing, what allowed, *ib.*
- in error. See *Error*.

APPEARANCE,

- bond given for, to be discharged on, 149

APPLICATION

- against the settled practice, 105
- speculative, or against master's report, *ib.*
- renewed, costs of former not paid, *ib.*
- under Interpleader Act, *ib.* 106
- to stay proceedings after verdict, 38
- judge at chambers, 98

ARBITRATION,

- power of arbitrator over the costs, 90
 - when a cause in court, *ib.*
 - to compel the attendance of witnesses, 189
 - where costs to abide the event, 90
 - several issues, *ib.* 91
 - over costs of the reference, 91
 - costs of the award or certificate, *ib.*
- award, when judgment may be signed under, *ib.*
 - under 20th., certificate of judge for higher scale of costs, 30, 52
 - motion to set aside, *ib.*
 - if out of time or rule discharged, 91
 - set aside and a second trial had, *ib.*
 - for the benefit of unsuccessful party alone, 91
 - must contain finding on each issue, 33

ARREST, and see *Execution*.

- proceedings on, 12
- by order of a judge, *ib.*
- defendant when entitled to discharge from, *ib.* 59, 125
 - statute relating to, 194
- when indorsement of time of, should be made, 12
- deposit under 43 Geo. 3, c. 46, *ib.*
 - when to be paid into court, 13
 - proceedings after deposit made, *ib.*
 - in case of irregularity, 59
- application to court, &c. to set aside, 59, 101, 125
 - how affected by demand of particulars, *ib.*
 - on the ground of privilege, 125
- of married woman, application to discharge, 60
- for more than recovered, 125
- when there was no intention of absconding; *ib.*
- for more than due, depriving plaintiff of costs, 83
 - defendant discharged, defective affidavit, 84

ARREST OF JUDGMENT,

- how costs are affected by, 43, 83
- where costs have been levied, 83

ASSUMPSIT. See *Actions*.

ATTACHMENT, WRIT OF,

- mode of proceeding to obtain, 108, 109
 - costs demanded and by whom, 109
 - by undersheriff, *ib.*
 - death of party to whom payable, 110
- when filed, 108
 - returnable, *ib.*
- indorsement of, *ib.*
- to issue *de novo*, *ib.*
- against sheriff, 101
 - set aside on terms, 12, 101
 - witness for non attendance, *ib.* 107
 - not producing papers, 107
 - husband only, wife a party suing, 110
 - other person, 101, 102
- against coroner, 108
 - to whom directed, *ib.*
- directed to lie in the office, 102, 109
- rule for, proceedings on, 108
 - when discharged, 104
 - death of party in whose favour granted, 103
 - another rule to whom granted, *ib.*
- where party privileged from arrest, 109
 - quasi* criminal matter, *ib.*
 - money demand, *ib.*
- bail bond, taken in, 109
 - costs of, *ib.*

ATTORNEY,

- if not inrolled, cannot sue for fees, 91
- authority of, to what it extends, 97
 - duration of, *ib.*
- when he may be changed, and how, *ib.*
 - upon what terms, *ib.*
- practising without certificate, 168
- right to sue in superior courts, 26
 - not affected by courts of request, *ib.*
- bill of costs,
 - delivery of, power of courts to order, 91, 97
 - from what derived, 92
 - to what it extends, *ib.*
 - does not extend, *ib.*
 - when application to be made, *ib.*
 - barred, *ib.*
 - what should be expressed in order, *ib.*

ATTORNEY, (*continued*)

bill of costs, delivery of, &c.

waived by consent, 94

taxation of, proceedings to obtain, 93

client's undertaking, *ib.* 95

effect of, 94

if more than one client, 93

when client disputes retainer, *ib.*

delays taxing, *ib.* 94

duty of master on, 94

reference to, *ib.*

if attorney not admitted, 50, 51

uncertificated, *ib.*

costs of taxing, 10, 94

what allowed to affect, *ib.*

where one sixth taken off, *ib.* 11

less is deducted, *ib.*

when to be applied for, 94, 95

client non liable to part of bill, 95

action for, verdict subject to taxation, 46

defendant's duty, *ib.*

not affected by court of requests, 86

rule calling upon, to pay costs, 102

attestation by, of warrant of attorney, &c. 16, 17

lien of, to what it extends, 95, 96, 97

not affected by set-off in adverse actions, 96

when not regarded, *ib.* 97

town agent, lien of, 96

proceedings in his name, 51

debtor liable to costs of, after payment of debt, 11

statutes relating to, 146, 159, 163, 168, 191

AVOWANT. See *Replevin*.

AWARD. See *Arbitration*.

BAIL,

putting in and justifying, 64

material variance in affidavit, 65

further time given to enquire after, *ib.*

justifying before issue joined, *ib.*

opposition of, 13

previous costs of opposing, *ib.*

deposit of, *ib.*

when defendant entitled to costs on, *ib.*

deposit in lieu of, mode of proceeding, 13

when defendant entitled to return of, 65

when they may render principal, 12

proceedings against, stayed on what terms, 11, 12

bail-bond, application to cancel, 59

BAIL (*continued.*)

special,

sued upon recognizances, 35

extent of liability, *ib.*

commission for taking, in vacation, 192

what costs they are liable to, 48

on attachment, 109

in error, amount of recognizance, 133

liability of, 35

after removal of suit, 35, 36

effect of putting in, 133

statutes relating to, 149, 156, 191.

BAILIFF,

liability of, if he takes more than his fees, 60

BALANCE

of account, costs in action for, 26

BANKRUPT.

preliminary proceeding under Bankrupt Act, 9

notice of disputing trading, &c., 16

effect of giving, 31

BANKRUPTCY.

preference of judgment creditor, in case of, 120

BENEFICEjudgments &c., not *per se*, a charge upon, 119mode of proceeding by *levari facias*, 124when issued, *ib.*time of taking effect, *ib.*what is affected by, *ib.***BILL.** See *Exceptions***BOND,**

action on, 24, 153

where several breaches assigned, 24

statute relating to, 153

of ancestor, action against the heir, 36

effect of false plea, &c., 36, 37

CAPIAS

under 1 & 2 Vict. c. 110, proceedings on, 12

application to set aside, 59

setting aside on what terms, 125

when to be executed, 194

ad satisfaciendum, whom it lies against, 115, 116

costs of execution and poundage, 118

effect of arrest upon, 116

setting aside for irregularity, 125

CASE. See *Actions.***CASSETER BREVE,**

no costs on entry of, 68

to plea in abatement, 14

CAUSE,

- shewn against rule, mode of proceeding, 103
 - in the first instance, *ib.*
 - as to part only, 104
 - when affidavit is faulty, *ib.*
 - rule is amended, *ib.*
 - moved for irregularity, *ib.* 105
 - not praying for costs, 104
 - for an attachment, *ib.*
 - moved for costs only, 105
 - when contrary to the practice, *ib.*
 - speculative, *ib.*
 - unnecessary or scandalous {matter in affidavit, *ib.*
 - costs of former motion unpaid, *ib.*

CERTIFICATE. See *Arbitration, Attorney, Judge.*

CHANCERY. See *Petty Bag.*

CLERGYMAN. See *Benefice.*

COGNOVIT ACTIONEM,

- how it must be attested, 16
- signing judgment on, 46
 - preliminary proceedings, *ib.*
- when notice of taxing not necessary, 49
- costs of execution upon, 118

COMMON INFORMERS,

- when entitled to costs, 7
- compounding with, 143
 - delaying or discontinuing, *ib.*
 - becoming nonsuit, *ib.*

CONSENT RULE. See *Ejectment.*

CONSOLIDATING CAUSES,

- costs of rule for, 51.
- effect of, 15

CORONER. See *Attachment.*

CORPORATION. See *Quo Warranto.*

COSTS,

- general principles.
 - by common law, none allowed, 138, 141, notes
 - when plaintiff entitled to, 6, 7
 - on issues in law, 7
 - scire facias*, *ib.*
 - suing as a pauper, *ib.*
 - common informer, *ib.*
 - to whom awarded, 7
 - on amendments, *ib.*
 - feigned issue, 8
 - uniform practice by judges and masters as to, 8, 9
 - of the day, when plaintiff entitled to, 19, 71

COSTS (*continued*)

- of the day, when defendant entitled to, 69
 - when defendant brings down cause by proviso, 70
 - plaintiff a pauper, *ib.*
 - to be moved for, 69, 70
 - motion for, does not stay proceedings, 71
 - shewing cause against, *ib.*
 - in ejectment, 70
 - form of affidavit to ground, 202
- of the plaintiff, when entitled to tax, 44
 - on writ of trial or inquiry, 45
 - obtains full costs, 46
 - common, what, 45
 - general costs of the cause, 46
 - full costs, what, 45
 - to abide the event, meaning of, 42
 - of increase, 45
 - how taxed, *ib.*
 - what is included in, *ib.*
 - several issues, 46—48
 - how to be made out, 48
 - what they include, 51
- on demurrer, 18
 - special case, *ib.*
- when plaintiff deprived of, 83
 - damages under 40s., 27, 29, 80
- where debtor sum certain under 20*l.*, 30, 52
- statute relating to, 138
- of the defendant
 - general rules respecting, 57
 - when he obtains a verdict, 75
 - entitled to general costs, 76
 - acting under 7 & 8 G. 4, c. 30, 80
 - on nonsuit, 75
 - where several issues, 76, 77
 - what they include, 51
 - how allowed, 78
 - plaintiff suing as a pauper, *ib.*
 - in fact and in law, *ib.*
 - proceeding to tax, 88, 89
 - on demurrer, 72
 - special case, *ib.*
 - plaintiff's general liability to, 79
 - statute relating to, 141, 147

COSTS (*continued.*)

- double and treble, how calculated, 8, 88
 - when awarded, 37, 87
 - judge's certificate for, 88
- taxation of
 - mode of proceeding to, 49, 50
 - by defendant, 88, 89
 - when notice not required, 49
 - how defendant may proceed, 50
 - what notice sufficient, 49, 50
 - when taxation postponed, *ib.*
 - not stayed by injunction, 45
 - when attorney not on the rolls, 50
 - after certificate for speedy execution, 37
 - scales of, 52
 - taxing officer, how guided, *ib.* 53
- bill of, preparing, 50
- affidavit of increase, what it should contain, 51, 52
 - in a country cause, 54
- of witnesses, 53
 - examination of, by commissioner, 54
 - documentary evidence, 53
- counsel's fees, 23, 54
- allocatur* of, when and how given, 54, 55
- review of taxation, 55
 - affidavit in support of, 56
- where given by way of special damage, 125
- interlocutory, when payment may be enforced, 105
- in error. See *Error*.

COUNSEL,

- fees to, what generally allowed, 23, 54
 - for opinion on evidence, *ib.*
 - consultation, *ib.*
 - refreshers, 22
 - on writ of trial, *ib.*
 - when not allowed on taxation, 51
- notice of attending by, form of, 201

COUNTERMAND. See *Notice of Trial*.**COUNTS,**

- common, how regulated, 65
 - for the same cause of action, *ib.*
 - defendant entitled to costs of, 66
- several on same cause of action when objected to, 31
 - judge's certificate, *ib.*
- plaintiff takes a verdict on one, 79
- part only found for plaintiff, 24

COUNTY COURT. See *Court of Requests*.

COURT,*quasi superior,*

proceedings in Petty Bag Office, 127
 Common Pleas, Lancaster, 129
 Durham Court of Pleas, 131

inferior,

plaint in, defendant entitled to costs, 141
 removal of proceedings from Lord Mayor's Court,
 48, 49, 123

Palace Court, *ib.*Sheriff's Court, London, *ib.*Court of Passage, Liverpool, *ib.*Venire, Hull, *ib.*

Borough Court, Preston, 131

statutes relating to, 166, 198

final judgment in, 131

orders and rules in, *ib.*lands &c. not affected by, *ib.*

of requests, debt recoverable there, effect of, 85, 86

does not affect an attorney, 86

application for suggestion, 44, 85

when act must be pleaded, 86

COVENANT. See *Actions.***CREDITORS,**

proceedings in order to affect lands &c. as to, 119

extent of, 119, 120

by writ of *elegit*, 120, 121

before 1st of October, 1838, 121

in inferior court, removal, 123

of trading &c. companies, powers of, 189

CROWN,

proceedings by, 1—3

generally neither pays or receives costs, 1

to what this rule extends, *ib.*when entitled to costs, *ib.*

motion against, refused, 3

more levied under extent than due, *ib.*in *quare impedit*, terms of amendment, *ib.*debtors of and acceptors of offices under, *ib.*alphabetical list of, *ib.*where, what, and by whom recorded, *ib.*fees on entry and search, *ib.*

statute giving costs against, 142

CUSTOMS,

notice of action against officers of, 9

actions for seizures, when no costs, 29

injuries accompanying seizure, *ib.***DAMAGE.**—See *Special Damage.*

DAMAGES,

- when plaintiff obtains, 6, 7
- and costs, meaning of, 96
- where no more costs allowed than, 80
- recovered less than 40s., effect of, 27, 80
 - how affects general costs of the cause, 27, 81
 - if freehold in issue, 27
 - or trespass, wilful and malicious, 28
 - by inferior tradesman, &c. *ib.*
 - for assault and battery, *ib.* 29
- double or treble, how costs affected, 37
- awarded under Statute of Merton, 4, 138

DAY. See *Costs of the Day*.

DEBT. See *Actions*.

DEBTOR

- to crown, how lands, &c. charged, 3
- how lands, &c. charged with judgment debts, &c. 119, 120
- relief and powers under Insolvent Act, 125
- discharged out of custody for irregularity, *ib.*
- where arrested for more than recovered, *ib.*
 - plaintiff recovers less than 20*l.*, *ib.*
- pays debt to creditor, further liability, 11
- discharge of, in execution for damages not exceeding 20*l.*, 172

DECLARATION,

- what special damage should be alleged in, 25
- documents set out on oyer, parcel of, 66
- demand of, effect of, 65
- common counts in, how regulated, *ib.*
- containing matter of inducement, 25

DEFAULT,

- judgment by, against one of several defendants, 34

DEFENDANT,

- costs of, general rules, 57
 - allowed four days to pay costs on writ, 58
 - how taxed, *ib.*
 - when plaintiff allowed to amend writ, 59
 - when notice given not to appear to writ, *ib.*
 - on arrest, 59
 - if illegal, 125
 - discharge from for irregularity, 59, 101, 125
 - on ground of privilege, 125
 - if married woman, 60
 - statute relating to, 194
 - sheriffs and bailiff's fees, 60

DEFENDANT (*continued*).

costs of, on outlawry or waiver, 59, 60
 security for, 60, 64
 putting in special bail, 64
 demand of declaration, 65
 judgment of *non pros*, *ib.*
 on common counts, when unnecessarily long,
 65

if for the same cause of
 action, 31, 65

on oyer, 14, 66
 payment of money into Court, 65, 67, 68,
 84

of sum tendered, 68
 mode of proceeding, 67

non pros or discontinuance, 68
 motion for judgment as in case of a non-
 suit, 69

costs of the day, when allowed, *ib.*

on *nolle prosequi*, 71

proceedings before trial, *ib.*

demurrer, special case, 18, 72, 73

issue of *nul tiel record*, *ib.*

the issue, if irregular, 73

discontinuance before notice of trial, *ib.*

after plea *quasi puis darrien*
continuance, *ib.*

effect of plea *quasi puis darrien continuance*, *ib.*

on demurrer to evidence, 74

bill of exceptions, *ib.* 75

when record withdrawn, 80

on nonsuit, 75

verdict, *ib.*

statute relating to, 147

as to pleading issues, 76, 77

judgment for surplus costs, 78

in replevin, 76

where plaintiff a pauper, 78

when sued as executor, &c. 76

general liability of plaintiff for, 79

when counts, &c. in declaration not made
 out, 24, 25

as to notices to admit, &c. *ib.*

of special jury, *ib.*

where record withdrawn, 80

where several defendants, 81

only one bill allowed, 82

verdict for one or more, 32, 81, 82

personal discharge of one of, 33

DEFENDANT (*continued*).

- costs of, on motions as to new trial, 82
 - motion to vacate or arrest judgment, 83
 - when arrested for more than due, *ib.* 125
 - when allowed, *ib.* 84, 125
 - discharged for irregularity, 84
- under Court of Requests Act, 85
- in action of waste, &c. damages under 3s. 4d., 86, 87
- double and treble costs, 87
 - how calculated, 88
- taxing costs, *ib.*
 - when notice should be given, 49, 88
 - of pleading issues, 89
- on formal amendments, *ib.*
 - error in fact, *ib.*
 - when satisfaction to be entered, *ib.*
 - final judgment for under award, 91

DELAY, see *Nonruls*.

- by act of Court, effect of, 44
- after issue joined, statute relating to, 164

DEMAND

- of particulars, no waiver of irregularity, 59
- costs taxed under judge's order, when necessary, 102
- view in dower, 4

DEMURRER,

- mode of proceeding on, 17
- books, what to contain, *ib.* 18, 72
 - how and when delivered, 17, 72
 - default on opposite side, *ib.* 18
- amendment before or after argument, *ib.* 72
 - on what terms, *ib.*
 - taxing costs upon, 18
- withdrawing, on what terms, *ib.* 72
- what costs allowed upon judgment on, 7, 17, 72
- judgment on, against heir or devisee, 36, 37
 - in dower, 4
- to evidence, effect of, 74

DEPOSIT

- in lieu of bail, under the statute, 12
 - when to be paid into Court, 13
- proceedings after deposit made, *ib.*
 - for irregularity, 59
- statute relating to, 168

DISCONTINUANCE,

- rule to discontinue, terms of, 68
 - non-payment of costs, *ib.*

DISCONTINUANCE (*continued*).

- before notice of trial, 73
- after plea *quasi puis darrien continuance*, *ib.*
 - new trial granted, 83
- statute relating to, 143
- in *quare impedit*, terms of, 5
 - error, 134, 135

DOCUMENTS, see *Admission*.

- stamping, if in opponent's custody, 71
- proving, not admitted, costs of, 31
 - foreign letters, 53
 - plans, *ib.*
 - translations, *ib.*
- statute relating to the production of, 182

DOWER,

- writ of right of, 4
 - issue in, as to *unques accouple*, 5
 - judgment on demurrer, 4
 - interlocutory motions in, 5
 - amendment, &c. 4
 - pleading rules do not apply to, *ib.*
 - damages and costs in, 4, 5
 - statutes relating to, 138

EJECTMENT, see *Actions*.

- costs in, where nominal plaintiff nonsuited, 34, 75
 - lessor of the plaintiff obtains verdict, 34
 - landlord defends, 35
- upon judgment by default, 125
- of the day in, 70
- when taxed, 37
- taxed costs only allowed in action for *mesne* profits, 125
- security for costs in, 62
- proceedings in error, 133
 - reversing judgment for defendant, 125
 - on affirmance, &c. 134
 - writ of inquiry as to *mesne* profits, *ib.*
- speedy execution in, 37

ERROR

- from inferior court, 18
- Exchequer Chamber, jurisdiction of, 133
 - staying proceedings in court below, *ib.*
 - amount of recognizance, *ib.*
 - in ejectment, *ib.*
 - case of a penalty, *ib.*
 - other actions, *ib.*
 - bail in, what liable to, 35, 36
 - amendment of writ of, 133
 - security for costs, when given, *ib.* 134

ERROR (*continued*).

Exchequer Chamber,

- assignment of,
 - terms of amendment, *ib.*
 - when defendant is entitled to costs, *ib.*
- issue in, mode of proceeding, *ib.*
- default in delivering books, *ib.*
- proceedings on affirmance, &c. in ejectment, *ib.*
 - in other actions, 135
 - non pros* or discontinuance, 134, 135
- costs in, 135
 - on error in fact *coram nobis* or *vobis*, 18
 - affirmance, 136
 - reversal, 89, 125, 136
 - by whom taxed, 136
- by executor, &c. *ib.*
- judgment and execution in, 136
- when writ of, cannot be brought, 38
- on bill of exceptions, 74
 - an issue in law in Chancery, 127
- statutes relating to, 138, 152, 157, 174

Ho use of Lords,

- jurisdiction of, 136
- costs in discretion of, *ib.*
 - on affirmance, *ib.*
 - how given in general, *ib.*
 - taxation of, 137
 - where respondent does not appear, *ib.*

EVIDENCE. See *Documents*. *Witnesses*.**EXCEPTIONS,**

- bill of, tendered, 74
- costs upon the writ of error thereon, *ib.*
- when it lies, 79

EXCHEQUER,

- powers of court of, as to matters of revenue, 2

EXCHEQUER CHAMBER. See *Error*.**EXCISE,**

- notice of action against officers of, 9

EXECUTION,

- time of issuing, 115
- certificate for immediate, 37, 38
- statute referring to, 178
- capias ad satisfaciendum*, writ of, 115
 - against whom it will not lie, *ib.* 116
 - effect of arrest upon or detainer by, 116

EXECUTION (*continued*).

- expenses of execution and poundage, 118
 - when to be levied against the person, 118, 119
 - form of indorsement, 119
- statutes relating to, 144, 168
- mode of charging in, 117
- discharge from, under Small Debtor's Act, *ib.* 118
 - effect of, 118
 - statute, 172
- for interest of judgment debt, 120
- taking in, how it affects charge on security, *ib.*
- elegit*, writ in the nature of, 120
 - what may be levied under, 121
- feri facias*, what may be seized under, 121, 195
 - proceedings by sheriff, *ib.* 122
 - return of, defendant beneficed clergyman, 124
 - sheriff's poundage, &c. when levied, 112
- attaching government stock, &c. 122
- mode of proceeding, 196
- upon cognovit or warrant of attorney, 118, 119
- removal of judgment from inferior court, 123
- effect of, *ib.*
- judgment signed in vacation, setting aside, 44
- staying execution, 178
- by extent, against sureties in newspaper recognizances, 124
- levari facias*, when issued, and to whom, 124
 - it takes effect from, *ib.*
- writ of, when it affects mortgagees, &c. 123
- irregularity in, 125
- forms of writs of, under 1 & 2 Vict. c. 110, 204—220

EXECUTOR OR ADMINISTRATOR,

- application against at the suit of the Queen, 2
- action by, for injury to testator, &c. 31
 - when not liable to costs if verdict against, *ib.* 32
 - statute relating to, 187
- against, for wrong done by testator, &c. 36
 - where he pleads false, *ib.*
 - payment or release, *ib.*
 - plene administravit*, 16, 76
 - testator's lands *bonâ fide* aliened, 37
 - judgment of assets *quando acciderint*, 36
- when liable to costs in error, 135

EXTENT

- against sureties in newspaper recognizances, 124
- if more levied under, than really due, 3

FEIGNED ISSUE,

- costs in, 7, 34
- under Interpleader Act, or order of judge, 34
- direction of Court of Chancery, 8
- upon a grant from crown, *ib.*
- as to a return to a *mandamus*, *ib.*

FIERI FACIAS. See *Execution*.**FORMS, 200—203****GLOUCESTER,**

- statute of,
- effect of, 6, 7, 45
- in dower, 4

HANAPER OFFICE,

- proceedings in, 127

HEIR,

- sued on bond, &c. of ancestor, 36
- plea of *plene administravit* by, 16
- judgment on demurrer against, 37

HEREDITAMENTS,

- mode of proceeding to affect, 110, 119

HUSBAND,

- action by, for injury to wife, 25
- attachment against, 110

INCREASE,

- costs of, what are, 45
- double and treble costs included in, 87
- affidavit of, how prepared, 50
- what it should contain, *ib.* 51
- form of, 202

INDORSEMENT

- of writ of summons, 10
- when amended, 11, 59
- terms of, *ib.*
- taxing costs mentioned in, 10, 58
- form of, 200
- on writ of execution, 119

INFANT,

- action against, 34

INFERIOR COURT. See *Court*.**INFORMER,**

- costs in proceedings by, 7
- statute relating to, 143

INJUNCTION,

- when right to tax costs, not stayed by, 45
- execution stayed by, 115

INQUIRY,

- writ of,
- attending by counsel, 39

INQUIRY (*continued*).

- costs of executing, 39
- speedy execution under, 38
- staying proceeding after executing, *ib.*
- notice of countermand, form of, 200
 - continuance, form of, 201
 - attending by counsel, *ib.*
- statute relating to, 177

INQUISITIONS

- for debts due to the Queen, 3

INSOLVENT DEBTOR'S ACT,

- effect of petition under, 14
- relief and powers under, 124

INTEREST,

- when judgment begins to carry, 55, 119, 120
 - at what rate, 120

INTERLOCUTORY COSTS,

- what are, 105
- when they may be recovered, *ib.*

INTERPLEADER ACT,

- applications under, 105
 - by defendant, *ib.*
 - sheriff, 106
 - where to be made, *ib.*
 - costs in, how and to whom paid, *ib.*
- feigned issue under, 34, 106
- statute, 182

IRREGULARITY,

- motion to set aside proceedings for, 100
- in arrest, 59
 - issue, 73
 - execution, 125

ISSUE,

- what raises a distinct, 25
- specific finding on each, 32, 33
- costs of several, under pleading rules, 46, 76
 - mode of taxing, 77, 78
- found for defendant, 89
 - mode of proceeding, 78
 - defendant succeeds upon all but one, 89
- in fact, how delivered, 19, 73
 - if irregular, may be set aside, 73
 - terms of amendment, *ib.*
 - law, costs of, 17
 - from Court of Chancery, 127
 - of *nil tiel* record, costs on, 72

JUDGE,

power of, at chambers, 98, 191

certificate of,

where less than 40*s.* recovered, 27, 29, 80

under act as to malicious injuries, 29

where debt recovered does not exceed 20*l.* 30

verdict taken subject to award, *ib.*

judge dies before award, *ib.*

in an action for infringement of patent, *ib.*

by assignees of bankrupt, 31

that documents were proved, *ib.*

separate ground of complaint on each count, *ib.*

several defendants, verdict for one or more, 32, 82

cause a proper one for special jury, 27
for immediate execution, 37

in actions for seizures under customs or excise laws, 81

that probable cause for pleading double, 81

as to double or treble costs, 87, 88

when necessary, 88

once granted cannot be annulled, 81

when reviewed by the court, *ib.*

statutes relating to, 177, 185

order of, power to make, 98

payment into Court under, 15, 185

for security for costs, 64

under Interpleader Act, 106

for a suggestion as to double costs, 88

Court will not add costs to, 98

at Nisi Prius, *ib.*

when reviewed by Court, *ib.*

to stay execution, 38

on payment of debt &c., 11

to attach government stock &c., 122

costs taxed under and not paid, 102

enforcing of, 99, 102, 107

JUDGMENT,

only one, as to costs at common law, 4

nunc pro tunc, 44

arrest of, 43

copyholds liable to, 121

rule of Court, when it has the effect of, 110

by default, 43

against co-defendant, 34

casual ejector, 125

final, when signed, 55, 115

JUDGMENT (*continued*).

- final, when it takes effect, 55, 115
 - interest attaches, 55, 120
- for defendant for surplus costs, 78
- entry of, to charge lands, &c. 119
 - clerical errors in, 56
- removal of, from inferior court, 123
 - statutes relating to, 166, 198
- of *nihil dicit*, 37
- non obstante veredicto*, 43
- proceedings upon, how stayed, 115
- motion to vacate, 43, 44
 - statute relating to, 178
- according to the very right and justice of the case, 44
- action on, 29
 - statute relating to, 170

JURY

- process, amendment of, 21
- good, costs of, 27
- special, judge's certificate, *ib.*
 - on application of defendant, 79
 - costs of, 27
 - when the record withdrawn, 80
- statutes relating to, 174, 188
- finding of, 32

JUSTICE

- notice of action against, 9
- must obtain certificate as to double costs, 68
- statute relating to, 165

LANCASTER,

- Court of Common Pleas at, jurisdiction, 129
 - costs, &c. how regulated, *ib.* 130
 - proceedings in, 130
- judgments, &c. of Court of Passage, Liverpool, &c. removed into, 131

LANDS

- how affected by judgments, 110, 119

LERVAI FACIAS. See *Benefice. Execution.*

LIBEL,

- proceedings upon newspaper recognizances, 124

LIEN. See *Attorney.*

LIMITATION, STATUTE OF,

- pleading, after promise made, 84
- action barred by, 33
- subsequent acknowledgment, *ib.*

LORDS, HOUSE OF. See *Error.*

MALICIOUS INJURY,

- costs in action for, 29

MANDAMUS,

proceedings upon, 111

costs of, *ib.* 112on execution, poundage, &c. levied, *ib.**venire de novo*, *ib.*

feigned issue, 8

abandonment before trial, *ib.***MASTER,**

how guided, upon taxing bill of costs, 8

proceedings to taxation before, 49

reference to, 100

of attorney's bill to, effect of, 94

motion against report of, 105

MISNOMER. See *Abatement*.**MORTGAGES,**

how to affect lands, &c. as to, 110, 119

before 1st October, 1838, 121

MOTION,

notice of, effect of, 99

costs of, *ib.*not praying for costs, *ib.*praying for, and no cause shewn, *ib.*two things, *ib.*

of course, drawn up in vacation, effect of, 110

rule made absolute, costs not mentioned, 100

without costs, *ib.*matter referred to the master, *ib.*

enlarging rule, 100

for irregularity, *ib.*

in arrest, on affidavit of debt, 101

an attachment against sheriff, *ib.*witness, *ib.*in other cases, *ib.*

directed to lie in the office, 102

rule made absolute on payment of costs, *ib.*where costs not paid under judge's order, *ib.*

when costs not given, 103

shewing cause against. See *Cause*.**NE EXEAT REGNO,**

bond given to sheriff under writ of, 128

NEW ASSIGNMENT

as to a surcharge, right of common pleaded, 47

in tort, what plaintiff entitled to, 67

defendant, *ib.***NEWSPAPER RECOGNIZANCES,**

proceedings upon, 124

NEW TRIAL,

motion for, after execution of writ of trial, 41
mode of proceeding, *ib.*

when to be made, 39
effect of, if granted, *ib.*
for misdirection, *ib.*
perverse verdict, *ib.*
against weight of evidence, 40
surprise, *ib.*
opposing application, 39, 41
granted, on what terms, 41
 silent as to costs, 42
 omitting to draw up rule, 41
 second trial, former costs not paid, 42
 abandonment of, *ib.*
judges divided in opinion, *ib.*
venire de novo, *ib.*
repleader, 43

NISI PRIUS RECORD,

how made up, 21
amendment of, 23
variance from evidence, *ib.*
facts, found specially for the court, 24

NOLLE PROSEQUI,

costs of, 68, 71
 in writ of right of dower, 4
as to bad counts or breaches, 24
 one of several defendants, 71
after plea of payment, 67

NONJOINER. See *Abatement*.**NON OBSTANTE VEREDICTO.** See *Judgment*.**NON PROS,**

after plea in abatement, 68
 rule to discontinue, *ib.*
 effect of non-payment of costs taxed under, *ib.*
 judgment of, costs how taxed, *ib.*
when defendant entitled to sign, 65, 67

NONSUIT,

judgment in case of, 69
 notice of motion in Q. B. 99
 peremptory undertaking, 69
for want of declaration, 149
in dower or *quare impedit*, 5
 ejectment, 75
 other actions, *ib.*
when defendant not entitled to costs of, 31
double or treble costs, how affected by, 37
statutes relating to, 141, 143, 147

NOTICE

- of action against a justice, 9
 - excise or custom house officer, *ib.*
- intention to dispute trading, &c. 16
- motion, when necessary, 99
 - costs of, *ib.*
- trial, by proviso, 19
 - continuance of, 19, 69
 - form of, 200
 - countermand of, 99, 69
 - when to be given, 165
 - form of, 200
- application to stay proceedings after judgment, 38
- taxing, 49, 80
 - in country causes, 50
 - town causes, *ib.*
 - rule by defendant for, *ib.*
 - when not required, 49
- judge's order to restrain disposition of stock, &c. 123

NUL TIEL RECORD,

- issue of, 19
 - on pleadings in abatement, 72
 - bar, *ib.*

ORDER. See *Judge*.

OUTLAWRY,

- staying proceedings in, 12
- proceedings to, taken oppressively, 59
 - setting aside, 60
- judgment in, against one of several defendants, 33

OYER,

- defendant craving, 14
 - enrolling deed, &c. after, 17
 - when entitled to demand, 66

PARTICULARS OF DEMAND,

- when plaintiff obtains costs of, 13
- further and better, 14
- demand of by defendant, effect of, 59
- when less demanded by, than by writ, 11

PARTITION,

- proceedings in, 127

PATENT,

- action for infringing, certificate of judge, 30
 - notices of objections, 16
 - costs in, 191

PAYMENT

- into court, order for, 15, 66
 - proceedings after, *ib.* 16, 66
 - costs of, 66—68
 - nolle prosequi*, when required after, 15, 67
 - taxing costs upon plea of, 16
- plea of, by executor, 36

PAUPER,

- plaintiff suing as, when entitled to costs, 7, 50
 - when liable to costs of the day, 70
- defending as, at the suit of the crown, 1, 2

PEDIGREE,

- searches after, 53

PENALTY. See Bond.**PENDENCY OF PRIOR ACTION. See Abatement.****PETTY BAG OFFICE,**

- jurisdiction of, 127, 128
- pleading rules and Uniformity of Process Act, *ib.*
- mode of proceeding, *ib.*
 - by whom costs, before issue joined, are taxed, *ib.*
 - after issue joined, *ib.*
- bill of costs how entitled, *ib.*
- error, where it lies to, 127

PLANS. See Documents.**PLAINTIFF,**

- costs of, general principles on which allowed, 6
 - uniform practice with reference to, 8
- preliminary proceedings, 9
- commencement of action, 10
- indorsement on writ, *ib.*
 - staying proceedings by payment, *ib.*
- proceedings on arrest, 12
- effect of petitioning Insolvent Court, 14
- particulars of demand, 13
- on oyer, 14, 17
 - an issue of *nul tiel record*, 14, 19
- plea in abatement, 14, 15
 - of payment, 15
 - proceedings after, *ib.*
- demurrer or special case, 17, 18
- when entitled to costs of the day, 19
- on admissions, how obtained, &c. *ib.*
- witnesses, 20
- when cause made a remanet, 22
 - trial postponed by defendant, *ib.*
- on amendment at trial, 23
 - counts and allegations in declaration, 24, 25

PLAINTIFF (*continued.*)

- costs of, however trivial the debt or damages, 26
 - where less than 40s. damages recovered, 27, 29
 - when not entitled to costs, 29
 - certificate of judge when necessary, 30
 - several defendants, 32, 33
 - where several issues, 32
 - on nonsuit for non appearance in ejectment, 34
 - against infant, *ib.*
 - executors, &c. 36
 - double and treble, 37
 - upon writ of inquiry, 39
 - taxation of, time of, 44
 - full costs, 45
 - common costs, *ib.*
 - costs of increase, *ib.*
 - general costs in the action, 46
 - where verdict for a debt, &c.
 - under 20*l.*, 30, 52
 - on several issues, 46
 - mode of proceeding, 49
 - notice of, when necessary, 49, 50
 - general rules observed on, 52
 - allocatur*, 54
 - review of, when granted, 55
 - on award, 90
 - bill of, how prepared, 50, 51
 - affidavit of increase in support of, *ib.*
- attending writ of inquiry by counsel, 39
 - form of notice, 201

PLEADING,

- amendment of, 7, 18
- quasi puis darrien continuance*, effect of, 73
- plene administravit*, 16
- riens per descent*, 37
- entry of *cassetur breve*, 14
- issues raised by double, 46, 76
 - statutes relating to, 155
- not putting in issue freehold or possession, 27
- Statute of Limitations after payment promised, 84
- variance between, and evidence, 43

POSTEA,

- when plaintiff entitled to, 45

POSSESSION. See *Writ. Ejectment.***PRIVILEGE.** See *Arrest. Attachment.***POUNDAGE.** See *Execution.*

PROFERT

by plaintiff in declaration, 14
 if untruly set out, 17
 defendant in plea, *ib.*

PROHIBITION,

costs in, included in judgment, 111
 when allowed, *ib.*
 none allowed, *ib.*
 statute relating to, 179

PROVISO,

record brought down by, 19, 70
 default in trying, *ib.*

PUIS DARRIEN CONTINUANCE. See *Abatement.***PURCHASERS,**

proceedings in order to affect lands, &c. as to, 119
 extent of, 120
 effect of *elegit* before 1st October, 1838, 121

QUAKER,

ca. sa. will not lie against, for tithes, &c., 116
 statute relating to, 190

QUARE IMPEDIT,

writ of, where and how maintainable, 4
 costs on verdict for demandant, 5
 defendant, *ib.*
 discontinuance or nonsuit, *ib.*

QUEEN. See *Crown.***QUO WARRANTO,**

information in nature of, 111
 proceedings upon, 113
 costs of, *ib.* 114
 taxing, *ib.*

RECORD,

amendment of, 23
 statute relating to, 185
 brought down by proviso, 70
 withdrawn, 80
 trial by, 19
 mode of proceeding, *ib.*
 in Petty Bag, 127

REFRESHER. See *Counsel.***RELEASE,**

plea of, by executor, 36

REMANET,

cause being made, 22, 69
 what costs allowed, *ib.*

REPLEADER

being awarded, how costs affected, 43

REPLEVIN,

- staying proceedings on replevin bond, 12
- defendant, when entitled to general costs, 76
 - single costs, 87
 - double costs, *ib.*
- succeeds upon avowry, 76
 - where several issues, 77

writ of error in, 135

statutes relating to, 140, 150, 162

REQUESTS, Court of. See *Courts.*

REVENUE

suits, 1

- applications referring to, where made, 2
- costs of, 3

REVIEW

- by Court of judge's certificate, 81
- of judge's order as to costs, 98
- taxation by judge, 52, 55

RIGHT,

- proceedings upon petition of, 1, 127

RULE. See *Attachment, Cause, Motion.*

SATISFACTION,

- entry thereof on the roll, 89

SCIRE FACIAS,

- costs in, 7, 46
- amendment of, on what terms, 59
- statute relating to, 153

SECURITY FOR COSTS,

- when defendant entitled to, 60, 64
 - on what grounds, 60—62
 - in ejectment, 62

proceedings to obtain, 63

if plaintiff a pauper, 64

application for, when to be made, 63

what affidavit must state, 64

when husband entitled to, *ib.*

application, a stay of proceedings, 63

subsequent insolvency of security, 64

SEIZURE,

- action for, under customs acts, 29

SHERIFF. See *Attachment, Execution, Interpleader Act.*

SLANDER,

- variance between evidence and declaration, 24
- special damage in, 25
- less than 40s. recovered in, 29
- statute relating thereto, 149

SPECIAL CASE,

- costs on, 18, 46
- under 3 & 4 W. 4, c. 42, 73, 187

SPECIAL DAMAGE,

costs by way of, when party illegally arrested, 125
in other cases, *ib.* 126

for slanderous words, 24

under Recovery of Tenements Act, 25—29

when it ought to be traversed, 126

STAMPING DOCUMENTS

in opponent's custody, 71

STATUTES.

6 Edw. 1, c. 1, 4, 138

3 Hen. 7, c. 10, *ib.*

11 Hen. 7, c. 12, 139

7 Hen. 8, c. 4, 140

21 Hen. 8, c. 19, *ib.*

23 Hen. 8, c. 15, 141

33 Hen. 8, c. 39, 142

5 Eliz. c. 9, *ib.*

8 Eliz. c. 2, 143

18 Eliz. c. 5, *ib.*

29 Eliz. c. 4, 144

43 Eliz. c. 6, 146

3 Jac. 1, c. 7, *ib.*

4 Jac. 1, c. 3, 147

7 Jac. 1, c. 5, 148

21 Jac. 1, c. 12, *ib.*

16, 33, 149

13 Car. 2, st. 2, c. 2, *ib.*

17 Car. 2, c. 7, 150

22 & 23 Car. 2, c. 9, 152

8 & 9 Will. 3, c. 11, *ib.*

4 Anne, c. 16, 155

3 Geo. 1, c. 15, 157

2 Geo. 2, c. 23, 159

11 Geo. 2, c. 19, 162

12 Geo. 2, c. 13, 163

14 Geo. 2, c. 17, 164

24 Geo. 2, c. 44, 165

19 Geo. 3, c. 70, 166

25 Geo. 3, c. 80, 168

43 Geo. 3, c. 46, *ib.*

141, 171

48 Geo. 3, c. 123, 172

6 Geo. 4, c. 50, 174

96, *ib.*

& 8 Geo. 4, c. 71, 175

11 Geo. 4, and 1 Will. 4, c. 70, 176

1 Will. 4, c. 7, 177

21, 179

STATUTES (*continued.*)

- 1 Will. 4, c. 22, 181
- 1 & 2 Will. 4, c. 58, 182
- 3 & 4 Will. 4, c. 42, 184
- 4 & 5 Will. 4, c. 94, 189
- 5 & 6 Will. 4, c. 74, 190
- 83, 191
- 1 & 2 Vict. c. 45, *ib.*
- 110, 194

STAY OF PROCEEDINGS

- after commencement of action, 10, 58
 - upon what terms, 10, 11
- when order for, may be obtained, 23
- in proceedings against bail, 11, 12
 - surety under Tenements Act, 12
- after judgment, 38
 - by injunction, 115

SUPERSEDEAS

- from plaintiff's laches, 29

TAXATION. See *Costs.*

TENEMENTS,

- how affected by judgments, 89

TESTATOR. See *Executor.*TORT. See *Actions.*

TRADING,

- notice of intention to dispute, 16

TRANSLATIONS,

- of foreign letters, 53

TREBLE COSTS. See *Costs.*TRIAL. See *Notice. New Trial.*

- place of, 21
- by proviso, 19
- putting off, 22
- by record, 19, 127
- proceedings at, 23
 - amendment of record at, *ib.*
 - demurrer to evidence, 74
- failing to prove documents at, 31
- application to stay proceedings after, in vacation, 44
- effect of withdrawing plea, 40
 - jury being discharged, *ib.*
- statute relating to, 178
- writ of, how made up, 21
 - in tort, or for unliquidated damages, 43
 - staying proceedings after execution of, 40
 - mode of proceeding for new trial, 41

UNDERSHERIFF,

- notes of trial when required, 41
- penalty for not sending, *ib.*
- fees of, on arrest, 12
- indorsement on writ by, *ib.*

UNDERTAKING

- to pay attorney's bill, 93
- of attorney, when given, 22

VARIANCE,

- immaterial to the merits of the cause, 43
- facts found specially upon, 24, 43
- effect of, *ib.*

VENIRE DE NOVO,

- ordered by court, 42
- awarded in proceedings by *mandamus*, 112

VENUE,

- in action by attorney, 21
- charging, 22

VERDICT,

- entry of, according to jury's intention, 32
- amendment after, 89
- for attorney's bill, subject to taxation, 46
- consequential damages, 25
- executor, &c. defendant, 76
- costs usually follow, 8
- for plaintiff, judge has power over costs, 80
- general effect of, 45
- defendant generally, 51
- as to any part, 75, 76
- subject to an award, 30
- master's certificate, *ib.*
- prima facie* evidence of what, 84

VIEW,

- demand of, in dower, 4
- costs of, by whom borne, 21

WAIVER,

- staying proceedings in, 12
- proceedings to, taken oppressively, 59
- setting aside, 60
- judgment in, against one of several defendants, 33

WARRANT OF ATTORNEY,

- how it must be attested, 16, 17
- signing judgment on, 46
- when notice of taxing not necessary, 49
- costs of execution upon, 118

WASTE,

- action of, to reversionary interest, 86
- statute relating to, 153

WIFE,

suing in husband's name without his consent, 64

WITNESS,

attendance of, how obtained, 20

if in prison, *ib.*

unnecessary after amendment, *ib.* 21

what entitled to, 20

if professional man, *ib.*

examination of, by commission, 21

statute relating to, 181

foreign witness and interpreter, costs of, *ib.* 53

mandamus to examine, 54

attorney, 52

travelling expenses of, 54

WRIT. See *Attachment. Error. Execution.*

of summons, notice not to appear after service of, 59

taxation of costs indorsed on, 10, 58

of trial, how made up, 21

set aside for irregularity, 59, 125

of possession, 37

statute relating to, 176

forms of writs, 204—220

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